

SENATE BILL NO. 188

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

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

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

14 **PART VI. UNIFORM COLLABORATIVE FAMILY LAW ACT**

15 **§377. Short title**

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

17 **§377.1. Legislative intent; conflicts; application and construction**

18 **A. It is the policy of this state to encourage the peaceable resolution of**
19 **disputes and the early resolution of pending litigation through compromise,**
20 **with special consideration given to disputes involving the parent-child**
21 **relationship, including disputes over the custody and support of a child.**

22 **B. If a provision of this Part conflicts with another provision of Louisiana**
23 **law and the conflict cannot be reconciled, this Part prevails.**

24 **C. In applying and construing this Part, consideration shall be given to**
25 **the need to promote uniformity of the law with respect to its subject matter**
26 **among states that enact a collaborative law process for family law matters.**

Revision Comments - 2024

(a) Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their dispute. The ground rules for collaborative family law participation are set forth in a written agreement in which parties designate collaborative lawyers and agree not to seek resolution of a dispute by a tribunal during the collaborative law process.

(b) Collaborative law matters that arise under the family law of this state are those matters detailed in R.S. 13:1401.

(c) The provisions of this Part do not alter the applicability of R.S. 46:236.1.2, which affords the state certain rights against the parties in cases in which it provides child support enforcement services.

§377.2. Definitions

In this Part, the following terms have the following meanings:

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

(a) Is made to conduct, participate in, continue, or reconvene a collaborative family law process.

(b) Occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded.

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

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

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

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

(d) Adoption.

(e) Parentage.

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

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

(4) "Collaborative family law process" means a procedure intended to

1 resolve a collaborative family law matter without intervention by a tribunal in
2 which persons:

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

4 (b) Are represented by collaborative lawyers.

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

7 (6) "Law firm" means:

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

10 (b) Lawyers employed in a legal services organization, or the legal
11 department of a corporation or other organization, or the legal department of
12 a government or governmental subdivision, agency, or instrumentality.

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

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

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

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

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

29 (12) "Record" means information that is inscribed on a tangible medium
30 or that is stored in an electronic or other medium and is retrievable in

1 perceivable form.

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

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

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

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

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

14 §377.3. Applicability

15 This Part applies to a collaborative family law participation agreement
 16 that meets the requirements of R.S. 9:377.4 and that is signed on or after August
 17 1, 2024.

18 §377.4. Collaborative family law participation agreement; requirements

19 A. A collaborative family law participation agreement is a voluntary,
 20 contractually based alternative dispute resolution process that shall:

21 (1) Be in a record.

22 (2) Be signed by the parties.

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

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

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

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

30 B. Parties may agree to include in a collaborative family law

1 participation agreement additional provisions not inconsistent with this Part.

2 §377.5. Beginning and concluding collaborative family law process

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

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

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

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

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

14 (3) Termination of the process.

15 D. A collaborative family law process terminates:

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

18 (2) When a party:

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

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

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

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

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

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

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

1 **F. A party may terminate a collaborative family law process with or**
2 **without cause.**

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

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

8 **(2) In a signed record:**

9 **(a) The parties consent to continue the process by reaffirming the**
10 **collaborative family law participation agreement.**

11 **(b) The collaborative family law agreement is amended to identify the**
12 **successor collaborative lawyer.**

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

15 **H. A collaborative family law process does not conclude if, with the**
16 **consent of the parties, a party requests a tribunal to approve a resolution of the**
17 **collaborative family law matter or any part thereof as evidenced by a signed**
18 **record.**

19 **I. A collaborative family law participation agreement may provide**
20 **additional methods of concluding a collaborative family law process.**

21 **§377.6. Proceedings pending before tribunal; status report**

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

28 **B. The parties shall file promptly with the tribunal notice in a record**
29 **when a collaborative family law process concludes. The stay of the proceeding**
30 **in accordance with Subsection A of this Section is lifted when the notice is filed.**

1 represent a party in a proceeding related to the collaborative family law matter.

2 B. Except as otherwise provided in Subsection C of this Section and in
3 R.S. 9:377.10 and 377.11, a lawyer in a law firm with which the collaborative
4 lawyer is associated is disqualified from appearing before a tribunal to
5 represent a party in a proceeding related to the collaborative family law matter
6 if the collaborative lawyer is disqualified from doing so in accordance with
7 Subsection A of this Section.

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

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

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

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

22 §377.10. Low-income parties

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

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

29 (1) The party has an annual income that qualifies the party for free legal
30 representation in accordance with the criteria established by the law firm for

1 free legal representation.

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

3 (3) 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 §377.11. Governmental entity as party

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

11 B. After a collaborative family law process concludes, another lawyer in
 12 a law firm with which the collaborative lawyer is associated may represent a
 13 government or governmental subdivision, agency, or instrumentality in the
 14 collaborative family law matter or a matter related to the collaborative family
 15 law matter if all of the following conditions are satisfied:

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

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

21 §377.12. Disclosure of information

22 Except as provided by law other than this Part, during the collaborative
 23 family law process, upon the request of another party, a party shall make
 24 timely, full, candid, and informal disclosure of information related to the
 25 collaborative family law matter without formal discovery. A party also shall
 26 update promptly previously disclosed information that has materially changed.
 27 The parties may define the scope of disclosure during the collaborative family
 28 law process.

29 §377.13. Standards of professional responsibility and mandatory reporting not
 30 affected

1 **This Part does not affect any of the following:**

2 **(1) The professional responsibility obligations and standards applicable**
 3 **to a lawyer or other licensed professional.**

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

6 **§377.14. Appropriateness of collaborative law process**

7 **Before a prospective party signs a collaborative family law participation**
 8 **agreement, a prospective collaborative lawyer shall:**

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

12 **(2) Provide the prospective party with information that the lawyer**
 13 **reasonably believes is sufficient for the party to make an informed decision**
 14 **about the material benefits and risks of a collaborative family law process as**
 15 **compared to the material benefits and risks of other reasonably available**
 16 **alternatives for resolving the proposed collaborative family law matter, such as**
 17 **litigation, mediation, arbitration, or expert evaluation.**

18 **(3) Advise the prospective party that:**

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

22 **(b) Participation in a collaborative family law process is voluntary and**
 23 **any party has the right to terminate unilaterally a collaborative family law**
 24 **process with or without cause.**

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

29 Revision Comments - 2024

30 Paragraph (1) of this Section includes a reasonable assessment of whether the

1 Post Separation Family Violence Relief Act or the Domestic Abuse Assistance Act
2 would be applicable in the matter, and thus whether the collaborative family law
3 process is an appropriate mechanism for resolving the parties' dispute. Therefore,
4 Section 15 of the Uniform Collaborative Law Act, which specifically addresses
5 domestic violence, is not reproduced in this Part.
6

7 **§377.15. Confidentiality of collaborative family law communication**

8 **A collaborative family law communication is confidential to the extent**
9 **agreed by the parties in a signed record or as provided by the laws of this state**
10 **other than this Part.**

11 **§377.16. Privilege against disclosure for collaborative family law**
12 **communication; admissibility; discovery**

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

16 **B. In a proceeding, the following privileges apply:**

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

19 **(2) A nonparty participant may refuse to disclose, and may prevent any**
20 **other person from disclosing, a collaborative family law communication of the**
21 **nonparty participant.**

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

25 **§377.17. Waiver and preclusion of privilege**

26 **A. A privilege in accordance with R.S. 9:377.16 may be waived in a**
27 **record or orally during a proceeding if it is expressly waived by all parties and,**
28 **in the case of the privilege of a nonparty participant, it is also expressly waived**
29 **by the nonparty participant.**

30 **B. A person who makes a disclosure or representation about a**
31 **collaborative family law communication that prejudices another person in a**
32 **proceeding may not assert a privilege in accordance with R.S. 9:377.16, but this**
33 **preclusion applies only to the extent necessary for the person prejudiced to**

1 respond to the disclosure or representation.

2 §377.18. Limits of privilege

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

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

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

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

12 (4) In an agreement resulting from the collaborative family law process,
13 evidenced by a record signed by all parties to the agreement.

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

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

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

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

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

30 (2) A proceeding seeking rescission or reformation of a contract arising

1 out of the collaborative family law process or in which a defense to avoid
 2 liability on the contract is asserted.

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

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

11 F. The privileges in accordance with R.S. 9:377.16 do not apply if the
 12 parties agree in advance in a signed record, or if a record of a proceeding
 13 reflects agreement by the parties, that all or part of a collaborative family law
 14 process is not privileged. This Subsection does not apply to a collaborative
 15 family law communication made by a person who did not receive actual notice
 16 of the agreement before the communication was made.

17 Revision Comments - 2024

18 It is the communication made in the collaborative law process that is
 19 protected by the collaborative law communication privilege, not the underlying
 20 evidence giving rise to the communication. Evidence that is communicated in the
 21 collaborative law process is subject to discovery, just as it would be if the
 22 collaborative law process had not occurred. More specifically, there is no "fruit of
 23 the poisonous tree" doctrine in the collaborative law communication privilege. For
 24 instance, a party who learns about a witness during a collaborative law process is not
 25 precluded by the privilege from subpoenaing that witness if the collaborative law
 26 process terminates and the matter goes to court.

27
 28 **§377.19. Authority of tribunal in case of noncompliance**

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

33 (1) Signed a record indicating an intention to enter into a collaborative
 34 family law participation agreement.

35 (2) Reasonably believed that the parties were participating in a

1 collaborative family law process.

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

4 (1) Enforce an agreement evidenced by a record resulting from the
5 process in which the parties participated.

6 (2) Apply the disqualification provisions of R.S. 9:377.5, 377.6, 377.9,
7 377.10, and 377.11.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____