
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2392 Session of
2015

INTRODUCED BY KLUNK, BAKER, CUTLER, DAVIS, GIBBONS, HARHAI,
A. HARRIS, MILLARD, RADER AND SAYLOR, OCTOBER 5, 2016

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 5, 2016

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 collaborative law.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 74

9 COLLABORATIVE LAW

10 Sec.

11 7401. Scope of chapter.

12 7402. Definitions.

13 7403. Applicability.

14 7404. Collaborative law participation agreement.

15 7405. Beginning a collaborative law process.

16 7406. Concluding a collaborative law process.

17 7407. Disqualification or withdrawal of collaborative lawyer.

18 7408. Disclosure of information.

1 7409. Professional responsibility.

2 7410. Confidentiality.

3 7411. Privilege.

4 7412. Waiver of privilege.

5 7413. Limits of privilege.

6 7414. Appropriateness of collaborative law process.

7 7415. Coercive or violent relationship.

8 7416. Relation to Electronic Signatures in Global and National
9 Commerce Act.

10 § 7401. Scope of chapter.

11 This chapter relates to collaborative law.

12 § 7402. Definitions.

13 The following words and phrases when used in this chapter
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Attorney." An attorney at law.

17 "Collaborative law communication." A statement, whether oral
18 or in a record, or verbal or nonverbal, which is made in the
19 course of a collaborative law process and occurs after the
20 parties sign a collaborative law participation agreement, but
21 before the collaborative law process is concluded.

22 "Collaborative law matter." A dispute, claim or issue which
23 is described in a participation agreement among family members.

24 The term includes:

25 (1) Marriage, divorce, dissolution and annulment.

26 (2) Property distribution, usage and ownership.

27 (3) Child custody and child visitation.

28 (4) Parentage.

29 (5) Alimony, alimony pendente lite and child support.

30 (6) Prenuptial, marital and postnuptial agreements.

1 (7) Adoption.

2 (8) Termination of parental rights.

3 (9) A matter arising under 20 Pa.C.S. (relating to
4 decedents, estates and fiduciaries).

5 (10) A matter arising under 15 Pa.C.S. Pt. II (relating
6 to corporations).

7 "Collaborative law participation agreement." An agreement by
8 the parties to participate in a collaborative law process to
9 resolve their collaborative law matter.

10 "Collaborative law process." A procedure to resolve a claim,
11 dispute or issue among family members without intervention by a
12 tribunal entered into by persons that:

13 (1) sign a collaborative law participation agreement;
14 and

15 (2) are represented by collaborative lawyers.

16 "Collaborative lawyer." An attorney who represents a party
17 in a collaborative law process and whom the party acknowledges
18 to be retained for that limited purpose.

19 "Family members." Individuals who have a relationship to
20 each other by any of the following:

21 (1) Marriage.

22 (2) Blood.

23 (3) Adoption.

24 (4) Cohabitation. This paragraph only applies if the
25 parties agree in the collaborative law participation
26 agreement that they were cohabiting with one another.

27 (5) Sharing a biological relationship to a child in a
28 dispute, claim or issue involving the child.

29 (6) An in loco parentis relationship to a child by one
30 of the parties to a dispute, claim or issue involving the

1 child. This paragraph only applies if the parties agree in
2 the collaborative law participation agreement that the party
3 that is not biologically related to the child has established
4 an in loco parentis relationship with the child.

5 "Law firm." A group of attorneys who:

6 (1) practice together in a partnership, professional
7 corporation, sole proprietorship, limited liability company
8 or association; or

9 (2) are employed in:

10 (i) a legal services organization;

11 (ii) the legal department of a corporation or other
12 organization; or

13 (iii) a government legal department.

14 "Nonparty participant." A person other than a party and the
15 party's collaborative lawyer, that participates in a
16 collaborative law process.

17 "Participant." Attorneys, parties and nonparty participants.

18 "Party." A person that signs a collaborative law
19 participation agreement and whose consent is necessary to
20 resolve a collaborative law matter under this chapter.

21 "Proceeding." A proceeding before a tribunal.

22 "Prospective party." A person that discusses with a
23 prospective collaborative lawyer the possibility of signing a
24 collaborative law participation agreement.

25 "Record." Information that is inscribed on a tangible medium
26 or that is stored in an electronic or other medium and is
27 retrievable in perceivable form.

28 "Related to the collaborative law matter." Involving the
29 same parties, transaction or occurrence, nucleus of operative
30 fact, dispute, claim, matter or issue as the collaborative law

1 matter.

2 "Settlement agreement." A signed agreement entered into by
3 the parties to a collaborative law participation agreement which
4 sets forth a resolution of the parties' collaborative law
5 matter.

6 "Sign." With present intent to authenticate or adopt a
7 record to:

8 (1) execute or adopt a tangible symbol; or

9 (2) attach to or logically associate with the record an
10 electronic symbol, sound or process.

11 "Tribunal." Any court, arbitrator, administrative agency or
12 other body acting in an adjudicative capacity which, after
13 presentation of evidence or legal argument, has jurisdiction to
14 render a decision affecting a party's interests in a matter.

15 § 7403. Applicability.

16 (a) Date.--This chapter shall apply to an agreement under
17 subsection (b) or (c) which is signed on or after the effective
18 date of this section.

19 (b) Collaborative law participation agreement.--This chapter
20 shall apply to a collaborative law participation agreement which
21 meets the requirements of section 7404 (relating to
22 collaborative law participation agreement).

23 (c) Other agreements.--

24 (1) Even though an agreement fails to meet the
25 requirements of section 7404, a tribunal may determine that
26 the parties intended to enter into a collaborative law
27 participation agreement if it finds that the parties:

28 (i) signed a record indicating an intention to enter
29 into a collaborative law participation agreement; and

30 (ii) reasonably believed they were participating in

1 a collaborative law process.

2 (2) If a tribunal makes a determination under paragraph
3 (1), this chapter shall apply to the agreement.

4 § 7404. Collaborative law participation agreement.

5 (a) Requirements.--A collaborative law participation
6 agreement must comply with all of the following:

7 (1) Be in a record.

8 (2) Be signed by the parties.

9 (3) State the parties' intention to resolve a
10 collaborative law matter through a collaborative law process
11 under this chapter.

12 (4) Describe the nature and scope of the collaborative
13 law matter.

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

16 (6) Contain a statement that a collaborative lawyer's
17 role is limited under this chapter, consistent with the
18 Rules of Professional Conduct.

19 (7) Set forth the manner and duration of a collaborative
20 law process under sections 7405 (relating to beginning a
21 collaborative law process) and 7406 (relating to concluding a
22 collaborative law process).

23 (8) State that:

24 (i) a collaborative law communication of a party or
25 a nonparty participant is confidential and subject to an
26 evidentiary privilege under this chapter; and

27 (ii) the privilege under subparagraph (i) may be
28 waived only expressly and by:

29 (A) every party; and

30 (B) every nonparty participant that has the

1 right to exercise the privilege.

2 (9) State that:

3 (i) the conduct of the collaborative lawyer is
4 governed by this chapter and rules of court under section
5 1722 (relating to adoption of administrative and
6 procedural rules); and

7 (ii) this chapter does not alter the collaborative
8 lawyer's responsibilities to the client under the rules
9 under subparagraph (i).

10 (b) Optional provisions.--Parties may agree to include in a
11 collaborative law participation agreement additional provisions
12 not inconsistent with this chapter or other applicable law.

13 § 7405. Beginning a collaborative law process.

14 (a) Signing.--A collaborative law process begins when the
15 parties sign a collaborative law participation agreement.

16 (b) Voluntary.--Participation in a collaborative law process
17 is voluntary and may not be compelled by a tribunal.

18 (c) Related matters.--Subject to section 7406(b)(2)(ii)
19 (relating to concluding a collaborative law process), parties in
20 a proceeding pending before a tribunal may sign a collaborative
21 law participation agreement to seek to resolve a collaborative
22 law matter related to the proceeding.

23 § 7406. Concluding a collaborative law process.

24 (a) Methods.--A collaborative law process is concluded by
25 any of the following:

26 (1) Except as set forth in subsection (c)(1),
27 resolution, as evidenced by a signed record:

28 (i) of the collaborative law matter; or

29 (ii) of a part of the collaborative law matter, with
30 an agreement by all parties that the remaining parts of

1 the collaborative law matter will not be resolved in the
2 collaborative law process.

3 (2) Termination under subsection (b).

4 (3) A method set forth in the collaborative law
5 participation agreement.

6 (b) Termination.--A collaborative law process is terminated,
7 with or without cause, by any of the following:

8 (1) A party gives notice to all parties and nonparty
9 participants in a record that the collaborative law process
10 is ended.

11 (2) A party acts under either of the following
12 subparagraphs:

13 (i) Begins a proceeding related to a collaborative
14 law matter without the agreement of all parties.

15 (ii) In a pending proceeding related to the
16 collaborative law matter:

17 (A) initiates a pleading, motion, order to show
18 cause or request for a conference with the tribunal;

19 (B) requests that the proceeding be put on the
20 tribunal's active calendar; or

21 (C) takes similar action requiring notice to be
22 sent to all parties and nonparty participants.

23 (3) Except as set forth in subsection (c) (2), a party
24 discharges a collaborative lawyer or a collaborative lawyer
25 withdraws from further representation of a party. The
26 collaborative lawyer shall give prompt notice to all other
27 parties and nonparty participants in a record.

28 (c) Continuation.--

29 (1) A collaborative law process does not conclude if,
30 with the consent of all parties, a party requests, in a

1 signed record, a tribunal to approve a resolution under
2 subsection (a) (1).

3 (2) Notwithstanding the discharge or withdrawal of a
4 collaborative lawyer, a collaborative law process shall
5 continue if, not later than 30 days after the date that the
6 notice under subsection (b) (3) is sent, all of the following
7 apply:

8 (i) The unrepresented party engages a successor
9 collaborative lawyer.

10 (ii) In a signed record:

11 (A) all parties consent to continue the
12 collaborative law process by reaffirming the
13 collaborative law participation agreement;

14 (B) the collaborative law participation
15 agreement is amended to identify the successor
16 collaborative lawyer; and

17 (C) the successor collaborative lawyer confirms
18 his representation of a party in the collaborative
19 law process.

20 § 7407. Disqualification or withdrawal of collaborative lawyer.

21 (a) Related proceedings.--Except as set forth in subsection
22 (b), the following apply:

23 (1) A collaborative lawyer is disqualified from
24 appearing before a tribunal to represent a party in a
25 proceeding related to the collaborative law matter.

26 (2) An attorney in a law firm with which the
27 collaborative lawyer is associated is disqualified from
28 appearing before a tribunal to represent a party in a
29 proceeding related to the collaborative law matter if the
30 collaborative lawyer is disqualified under paragraph (1).

1 (b) Exception.--Notwithstanding subsection (a), a
2 collaborative lawyer or an attorney in a law firm with which the
3 collaborative lawyer is associated may represent a party to do
4 any of the following:

5 (1) Ask a tribunal to approve an agreement resulting
6 from the collaborative law process.

7 (2) Seek or defend an emergency order to protect the
8 health, safety, welfare or interest of a party or a family
9 member related to that party in an action involving the other
10 party if a successor collaborative lawyer is not immediately
11 available to represent that party or family member.

12 Representation under this paragraph may continue only until
13 the party or family member is represented by a successor
14 collaborative lawyer or reasonable measures are taken to
15 protect the health, safety, welfare or interest of the party
16 or family member.

17 § 7408. Disclosure of information.

18 Except as provided by statute other than this chapter, during
19 the collaborative law process, the following apply:

20 (1) A party shall provide timely, full, candid and
21 informal disclosure of information related to the
22 collaborative law matter without formal discovery.

23 (2) A party shall update promptly previously disclosed
24 information which has materially changed.

25 (3) Parties may define the scope of disclosure during
26 the collaborative law process.

27 § 7409. Professional responsibility.

28 This chapter does not affect any of the following:

29 (1) Professional responsibility obligations and
30 standards applicable to:

1 (i) an attorney; or
2 (ii) a person professionally licensed or certified
3 under State law.

4 (2) The statutory obligation of a person to report abuse
5 or neglect of a child or adult.

6 § 7410. Confidentiality.

7 A collaborative law communication is confidential to the
8 extent agreed to by the parties in a signed record or as
9 provided by the laws of this Commonwealth.

10 § 7411. Privilege.

11 (a) Establishment.--In a proceeding, the following
12 privileges are in addition to application of the attorney-client
13 privilege provided by the laws of this Commonwealth:

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

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

20 (b) Effect.--

21 (1) Subject to sections 7412 (relating to waiver of
22 privilege) and 7413 (relating to limits of privilege), a
23 collaborative law communication made by a party or a nonparty
24 participant is privileged under subsection (a), is not
25 subject to discovery and is not admissible in evidence.

26 (2) Evidence that is otherwise admissible, readily
27 available from other sources or subject to discovery does not
28 become inadmissible or protected from discovery solely
29 because of its disclosure or use in a collaborative law
30 process.

1 (c) Standing.--

2 (1) A privilege under this section may be claimed by:

3 (i) the party or nonparty participant in person; or

4 (ii) if the party or nonparty participant is
5 incapacitated or deceased, by a guardian or personal
6 representative.

7 (2) If a corporation, association or other legal entity
8 is the nonparty participant claiming a privilege under this
9 section and is no longer in existence, its successor in
10 interest may claim the privilege.

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

17 § 7412. Waiver of privilege.

18 A privilege under section 7411 (relating to privilege) may be
19 waived in a record or orally during a proceeding if it is
20 expressly waived by the party or nonparty participant entitled
21 to assert the privilege.

22 § 7413. Limits of privilege.

23 (a) Exclusions.--There is no privilege under section 7411
24 (relating to privilege) if any of the following paragraphs
25 apply:

26 (1) The collaborative law communication is made during a
27 session of a collaborative law process which is open, or
28 required by law to be open, to the public.

29 (2) The collaborative law communication is sought,
30 obtained or used to:

1 (i) threaten or plan to inflict bodily injury;

2 (ii) commit or attempt to commit a crime; or

3 (iii) conceal ongoing criminal activity.

4 (3) The collaborative law communication is:

5 (i) made in a settlement agreement resulting from
6 the collaborative law process; and

7 (ii) evidenced by a record signed by all parties to
8 the settlement agreement.

9 (4) Subject to subsection (b), the collaborative law
10 communication is sought or offered to prove or disprove any
11 of the following:

12 (i) A claim or complaint of professional misconduct
13 or malpractice.

14 (ii) The unreasonableness of a collaborative fee of
15 a collaborative lawyer or other professional arising from
16 or related to a collaborative law process.

17 (iii) Abuse, neglect, abandonment or exploitation of
18 a child or adult, unless the appropriate protective
19 services agency is a party or a nonparty participant.

20 (5) Subject to subsection (b), a tribunal finds after a
21 hearing in camera that the party seeking discovery or the
22 proponent of the evidence has shown that:

23 (i) the evidence is not otherwise available;

24 (ii) the need for the evidence substantially
25 outweighs the interest in protecting confidentiality; and

26 (iii) the collaborative law communication is sought
27 or offered in:

28 (A) a court proceeding involving a crime; or

29 (B) a proceeding in which:

30 (I) rescission or reformation of a contract

1 arising out of the collaborative law process is
2 sought; or
3 (II) a defense to avoid liability on a
4 contract arising out of the collaborative law
5 process is asserted.

6 (6) The parties agree in advance in a signed record that
7 all or part of a collaborative law process is not privileged.

8 (b) Limitation.--

9 (1) If a collaborative law communication is excluded
10 under subsection (a) (4) or (5), only the part of the
11 collaborative law communication necessary for the application
12 of the exclusion may be disclosed or admitted.

13 (2) Disclosure or admission of evidence under paragraph
14 (1) does not make the evidence or any other collaborative law
15 communication discoverable or admissible for any other
16 purpose.

17 § 7414. Appropriateness of collaborative law process.

18 (a) Assessment and review.--To the extent permitted under 42
19 Pa.C.S. §§ 5916 (relating to confidential communications to
20 attorney) and 5928 (relating to confidential communications to
21 attorney), the attorney work product doctrine and the Rules of
22 Professional Conduct, before a prospective party signs a
23 collaborative law participation agreement, the participants in a
24 collaborative process shall:

25 (1) assess factors the attorney reasonably believes
26 relate to whether a collaborative law process is appropriate
27 for the matter; and

28 (2) review information that the attorney reasonably
29 believes is sufficient for the prospective party to make an
30 informed decision about the material benefits and risks of a

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

5 (b) Advice.--An attorney shall advise a prospective party
6 that:

7 (1) after signing an agreement, if a party initiates a
8 proceeding or seeks tribunal intervention in a pending
9 proceeding related to the collaborative matter, the
10 collaborative law process terminates;

11 (2) participation in a collaborative law process is
12 voluntary, and any party has the right to terminate
13 unilaterally a collaborative law process with or without
14 cause; and

15 (3) the collaborative lawyer and any attorney in a law
16 firm with which the collaborative lawyer is associated may
17 not appear before a tribunal to represent a party in a
18 proceeding related to the collaborative matter.

19 § 7415. Coercive or violent relationship.

20 (a) Declaration of policy.--To the extent permitted under 42
21 Pa.C.S. §§ 5916 (relating to confidential communications to
22 attorney) and 5928 (relating to confidential communications to
23 attorney), the attorney work product doctrine and the Rules of
24 Professional Conduct, the following apply:

25 (1) Before a prospective party signs a collaborative law
26 participation agreement, an attorney shall make reasonable
27 inquiry whether the prospective party has a history of a
28 coercive or violent relationship with any party who will be
29 part of the collaborative law process.

30 (2) Throughout a collaborative law process, a

1 collaborative lawyer shall reasonably assess whether the
2 party the collaborative lawyer represents has a history of a
3 coercive or violent relationship with any party who will be
4 part of the collaborative law process.

5 (3) If an attorney reasonably believes that a party or
6 prospective party has a history of a coercive or violent
7 relationship with any party who will be part of the
8 collaborative law process, the attorney may not begin or
9 continue a collaborative law process unless the party or
10 prospective party:

11 (i) requests beginning or continuing a process; and

12 (ii) indicates that the safety of all parties to the
13 collaborative law process can be protected adequately
14 during the process.

15 (b) Private cause of action.--An attorney's failure to
16 protect a party under this section does not give rise to a
17 private cause of action against the attorney.

18 § 7416. Relation to Electronic Signatures in Global and
19 National Commerce Act.

20 To the extent permitted by section 102 of the Electronic
21 Signatures in Global and National Commerce Act (Public Law 106-
22 229, 15 U.S.C. § 7002), this chapter may supersede provisions of
23 that act.

24 Section 2. This act shall take effect in 60 days.