

ACT 2013 - 355

1 HB396
2 147594-4
3 By Representative Black
4 RFD: Judiciary
5 First Read: 07-MAR-13



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ENROLLED, An Act,

To adopt the Alabama Uniform Collaborative Law Act; to provide for resolution of certain family law matters through a collaborative law process; to provide requirements for the process and for attorneys participating in the resolution of a matter using the collaborative process; to provide for a collaborative law participation agreement; to authorize a tribunal to issue emergency orders to protect the health, safety, welfare, or interest of a party or child of a party; to provide that certain communications made during the collaborative process are confidential; and to authorize a tribunal to make certain rulings regarding a collaborative law agreement.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. SHORT TITLE. This act may be cited as the Alabama Uniform Collaborative Law Act.

Section 2. DEFINITIONS. In this act:

(1) "Collaborative 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 law process; and

1 (B) occurs after the parties sign a collaborative
2 law participation agreement and before the collaborative law
3 process is concluded.

4 (2) "Collaborative law participation agreement"
5 means an agreement by persons to participate in a
6 collaborative law process.

7 (3) "Collaborative law process" means a procedure
8 intended to resolve a collaborative matter without
9 intervention by a tribunal in which persons:

10 (A) sign a collaborative law participation
11 agreement; and

12 (B) are represented by collaborative lawyers.

13 (4) "Collaborative lawyer" means a lawyer who
14 represents a party in a collaborative law process.

15 (5) "Collaborative matter" means a dispute,
16 transaction, claim, problem, or issue for resolution,
17 including a dispute, claim, or issue in a proceeding, which is
18 described in a collaborative law participation agreement and
19 arises under the family or domestic relations law of this
20 state, including, but not limited to, the following:

21 (A) marriage, divorce, dissolution, annulment, and
22 property distribution;

23 (B) child custody, visitation, and parenting time;

24 (C) alimony, maintenance, and child support;

1 (D) adoption and other probate court matters
2 involving families and children;

3 (E) parentage; and

4 (F) premarital, marital, and post-marital
5 agreements.

6 (6) "Law firm" means a lawyer or lawyers in a
7 private firm, lawyers employed in the legal department of a
8 corporation or other organization, and lawyers employed in a
9 legal services organization.

10 (7) "Nonparty participant" means a person, other
11 than a party and the party's collaborative lawyer, that
12 participates in a collaborative law process.

13 (8) "Party" means a person that signs a
14 collaborative law participation agreement and whose consent is
15 necessary to resolve a collaborative matter.

16 (9) "Person" means an individual or entity including
17 those acting in a fiduciary capacity, corporation, business
18 trust, estate, trust, partnership, limited liability company,
19 association, joint venture, public corporation, government or
20 governmental subdivision, agency, or instrumentality, or any
21 other legal or commercial entity.

22 (10) "Proceeding" means:

23 (A) a judicial, administrative, arbitral, or other
24 adjudicative process before a tribunal, including related

1 prehearing and post-hearing motions, conferences, and
2 discovery; or

3 (B) a legislative hearing or similar process.

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

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

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

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

17 (A) to execute or adopt a tangible symbol; or

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

20 (15) "Tribunal" means:

21 (A) a court, arbitrator, administrative agency, or
22 other body acting in an adjudicative capacity which, after
23 presentation of evidence or legal argument, has jurisdiction
24 to render a decision affecting a party's interests in a
25 matter; or

1 (B) a legislative body conducting a hearing or
2 similar process.

3 Section 3. APPLICABILITY. This act applies to a
4 collaborative law participation agreement that meets the
5 requirements of Section 4 signed on or after January 1, 2014.

6 Section 4. COLLABORATIVE LAW PARTICIPATION
7 AGREEMENT; REQUIREMENTS.

8 (a) A collaborative law participation agreement
9 must:

10 (1) be in a record;

11 (2) be signed by the parties;

12 (3) state the parties' intention to resolve a
13 collaborative matter through a collaborative law process under
14 this act;

15 (4) describe the nature and scope of the matter and
16 the collaborative law process;

17 (5) identify the collaborative lawyer who represents
18 each party in the process;

19 (6) contain a statement by each collaborative lawyer
20 confirming the lawyer's representation of a party in the
21 collaborative law process;

22 (7) contain a provision informing the client that
23 the collaborative lawyer and his or her law firm must withdraw
24 from their representation of the client should the
25 collaborative law process terminate under Section 5(d); and

1 (8) contain a statement explaining the disclosure of
2 information required under Section 12.

3 (b) Parties may agree to include in a collaborative
4 law participation agreement additional provisions not
5 inconsistent with this act.

6 Section 5. BEGINNING AND CONCLUDING COLLABORATIVE
7 LAW PROCESS.

8 (a) A collaborative law process begins when the
9 parties sign a collaborative law participation agreement.

10 (b) A tribunal may not order a party to participate
11 in a collaborative law process over that party's objection.

12 (c) A collaborative law process is concluded by a:

13 (1) resolution of a collaborative matter as
14 evidenced by a signed record;

15 (2) resolution of a part of the collaborative
16 matter, evidenced by a signed record, in which the parties
17 agree that the remaining parts of the matter will not be
18 resolved in the process; or

19 (3) termination of the process.

20 (d) A collaborative law process terminates:

21 (1) when a party gives notice to other parties in a
22 record that the process is ended;

23 (2) when a party:

24 (A) begins a proceeding related to a collaborative
25 matter without the agreement of all parties; or

1 (B) in a pending proceeding related to the matter:

2 (i) initiates a pleading, motion, order to show
3 cause, or request for a conference with the tribunal;

4 (ii) requests that the proceeding be put on the
5 tribunal's active calendar; or

6 (iii) takes similar action requiring notice to be
7 sent to the parties; or

8 (3) except as otherwise provided by subsection (g),
9 when a party discharges a collaborative lawyer or a
10 collaborative lawyer withdraws from further representation of
11 a party.

12 (e) A party's collaborative lawyer shall give prompt
13 notice to all other parties in a record of a discharge or
14 withdrawal.

15 (f) A party may terminate a collaborative law
16 process with or without cause.

17 (g) Notwithstanding the discharge or withdrawal of a
18 collaborative lawyer, a collaborative law process continues,
19 if not later than 30 days after the date that the notice of
20 the discharge or withdrawal of a collaborative lawyer required
21 by subsection (e) is sent to the parties:

22 (1) the unrepresented party engages a successor
23 collaborative lawyer; and

24 (2) in a signed record:

1 (A) the parties consent to continue the process by
2 reaffirming the collaborative law participation agreement;

3 (B) the agreement is amended to identify the
4 successor collaborative lawyer; and

5 (C) the successor collaborative lawyer confirms the
6 lawyer's representation of a party in the collaborative
7 process.

8 (h) A collaborative law process does not conclude
9 if, with the consent of the parties, a party requests a
10 tribunal to approve a resolution of the collaborative matter
11 or any part thereof as evidenced by a signed record.

12 (i) A collaborative law participation agreement may
13 provide additional methods of concluding a collaborative law
14 process.

15 Section 6. PROCEEDINGS PENDING BEFORE TRIBUNAL;
16 STATUS REPORT.

17 (a) Persons in a proceeding pending before a
18 tribunal may sign a collaborative law participation agreement
19 to seek to resolve a collaborative matter related to the
20 proceeding. The parties shall file promptly with the tribunal
21 a notice of the agreement after it is signed. Subject to
22 subsection (c) and Sections 7 and 8, the filing operates as an
23 application for a stay of the proceeding.

24 (b) The parties shall file promptly with the
25 tribunal notice in a record when a collaborative law process

1 concludes by agreement of the parties or by either party if
 2 the process is terminated. The stay of the proceeding under
 3 subsection (a) is lifted when the notice is filed. The notice
 4 may not specify any reason for termination of the process.

5 (c) A tribunal in which a proceeding is stayed under
 6 subsection (a) may require the parties and collaborative
 7 lawyers to provide a status report on the collaborative law
 8 process and the proceeding. A status report may include only
 9 information on whether the process is ongoing or concluded.
 10 It may not include a report, assessment, evaluation,
 11 recommendation, finding, or other communication regarding a
 12 collaborative law process or collaborative law matter.

13 (d) A tribunal may not consider a communication made
 14 in violation of subsection (c).

15 (e) A tribunal shall provide parties notice and an
 16 opportunity to be heard before dismissing a proceeding in
 17 which a notice of collaborative process is filed based on
 18 delay or failure to prosecute.

19 Section 7. EMERGENCY ORDER. During a collaborative
 20 law process, a tribunal may issue emergency orders to protect
 21 the health, safety, welfare, or interest of a party or a child
 22 of either party.

23 Section 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A
 24 tribunal may approve an agreement resulting from a
 25 collaborative law process.

1 Section 9. DISQUALIFICATION OF COLLABORATIVE LAWYER
2 AND LAWYERS IN ASSOCIATED LAW FIRM.

3 (a) Except as otherwise provided in subsection (c),
4 a collaborative lawyer is disqualified from appearing before a
5 tribunal to represent a party in a proceeding related to the
6 collaborative matter. This disqualification is not subject to
7 waiver by the parties.

8 (b) Except as otherwise provided in subsection (c),
9 a lawyer in a law firm with which the collaborative lawyer is
10 associated is disqualified from appearing before a tribunal to
11 represent a party in a proceeding related to the collaborative
12 matter if the collaborative lawyer is disqualified from doing
13 so under subsection (a) or other court order.

14 (c) A collaborative lawyer or a lawyer in a law firm
15 with which the collaborative lawyer is associated may
16 represent a party:

17 (1) to ask a tribunal to approve an agreement
18 resulting from the collaborative law process and prepare and
19 file all documents necessary to obtain a final order; or

20 (2) to seek or defend an emergency order to protect
21 the health, safety, welfare, or interest of a party, or the
22 party's child including, but not limited to, a proceeding
23 filed under the Protection from Abuse Act, Chapter 5 of Title
24 31, Code of Alabama 1975, if a successor lawyer is not
25 immediately available to represent that person.

1 (d) If subsection (c) (2) applies, a collaborative
2 lawyer, or lawyer in a law firm with which the collaborative
3 lawyer is associated, may represent a party or the party's
4 child only until the person is represented by a successor
5 lawyer or reasonable measures are taken to protect the health,
6 safety, welfare, or interest of the person.

7 Section 10. LOW INCOME PARTIES. [RESERVED]

8 Section 11. GOVERNMENTAL ENTITY AS PARTY. [RESERVED]

9 Section 12. DISCLOSURE OF INFORMATION.

10 (a) Except as provided by law other than this act,
11 during the collaborative law process, a party shall make
12 timely, full, candid, and informal disclosure of information
13 related to the collaborative matter without formal discovery.
14 A party also shall update promptly previously disclosed
15 information that has materially changed.

16 (b) The parties may define the scope of disclosure
17 under subsection (a) during the collaborative law process.

18 Section 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY
19 AND MANDATORY REPORTING NOT AFFECTED.

20 This act does not affect:

21 (1) the professional responsibility obligations and
22 standards applicable to a lawyer or other licensed
23 professional; or

1 (2) the obligation of a person to report abuse or
2 neglect, abandonment, or exploitation of a child or adult
3 under the law of this state.

4 Section 14. APPROPRIATENESS OF COLLABORATIVE LAW
5 PROCESS. Before a prospective party signs a collaborative law
6 participation agreement, a prospective collaborative lawyer
7 shall:

8 (1) assess with the prospective party factors the
9 lawyer reasonably believes relate to whether a collaborative
10 law process is appropriate for the prospective party's matter;

11 (2) provide the prospective party with information
12 that the lawyer reasonably believes is sufficient for the
13 party to make an informed decision about the material benefits
14 and risks of a collaborative law process as compared to the
15 material benefits and risks of other reasonably available
16 alternatives for resolving the proposed collaborative matter;
17 and

18 (3) advise the prospective party that:

19 (A) after signing an agreement if a party initiates
20 a proceeding or seeks tribunal intervention in a pending
21 proceeding related to the collaborative matter, the
22 collaborative law process terminates;

23 (B) participation in a collaborative law process is
24 voluntary and any party has the right to terminate

1 unilaterally a collaborative law process with or without
2 cause; and

3 (C) the collaborative lawyer and any lawyer in a law
4 firm with which the collaborative lawyer is associated may not
5 appear before a tribunal to represent a party in a proceeding
6 related to the collaborative matter, except as authorized by
7 Section 9(c).

8 Section 15. COERCIVE OR VIOLENT RELATIONSHIP.

9 (a) Before a prospective party signs a collaborative
10 law participation agreement, a prospective collaborative
11 lawyer shall make reasonable inquiry whether the prospective
12 party has a history of a coercive or violent relationship with
13 another prospective party.

14 (b) Throughout a collaborative law process, a
15 collaborative lawyer reasonably and continuously shall assess
16 whether the party the collaborative lawyer represents has a
17 history of a coercive or violent relationship with another
18 party.

19 (c) If a collaborative lawyer reasonably believes
20 that the party the lawyer represents or the prospective party
21 who consults the lawyer has a history of a coercive or violent
22 relationship with another party or prospective party, the
23 lawyer may not begin or continue a collaborative law process
24 unless:

1 (1) the party or the prospective party requests
2 beginning or continuing a process; and

3 (2) the collaborative lawyer reasonably believes
4 that the safety of the party or prospective party can be
5 protected adequately during a process.

6 Section 16. CONFIDENTIALITY OF COLLABORATIVE LAW
7 COMMUNICATION. A collaborative law communication is
8 confidential except to the extent agreed by the parties in a
9 signed record or as provided by law of this state other than
10 this act.

11 Section 17. PRIVILEGE AGAINST DISCLOSURE FOR
12 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.
13 [RESERVED]

14 Section 18. WAIVER AND PRECLUSION OF PRIVILEGE.
15 [RESERVED]

16 Section 19. LIMITS OF PRIVILEGE. [RESERVED]

17 Section 20. AUTHORITY OF TRIBUNAL IN CASE OF
18 NONCOMPLIANCE.

19 (a) If an agreement fails to meet the requirements
20 of Section 4, or a lawyer fails to comply with Section 14 or
21 15, a tribunal may nonetheless find that the parties intended
22 to enter into a collaborative law participation agreement if
23 they:

24 (1) signed a record indicating an intention to enter
25 into a collaborative law participation agreement; and

1 (2) reasonably believed they were participating in a
2 collaborative law process.

3 (b) If a tribunal makes the findings specified in
4 subsection (a), and the interests of justice require, the
5 tribunal may:

6 (1) enforce an agreement evidenced by a record
7 resulting from the process in which the parties participated;

8 (2) apply the disqualification provisions of
9 Sections 5, 6, and 9; and

10 (3) apply any privilege under law.

11 Section 21. UNIFORMITY OF APPLICATION AND
12 CONSTRUCTION. In applying and construing this uniform act,
13 consideration must be given to the need to promote uniformity
14 of the law with respect to its subject matter among states
15 that enact it.

16 Section 22. RELATION TO ELECTRONIC SIGNATURES IN
17 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits,
18 and supersedes the federal Electronic Signatures in Global and
19 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
20 does not modify, limit, or supersede Section 101(c) of that
21 act, 15 U.S.C Section 7001(c), or authorize electronic
22 delivery of any of the notices described in Section 103(b) of
23 that act, 15 U.S.C. Section 7003(b).

24 Section 23. SEVERABILITY. If any provision of this
25 act or its application to any person or circumstance is held

1 invalid, the invalidity does not affect other provisions or
2 applications of this act which can be given effect without the
3 invalid provision or application, and to this end the
4 provisions of this act are severable.

5 Section 24. EFFECTIVE DATE. This act takes effect
6 January 1, 2014.

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~~_____~~

Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 18-APR-13.

Jeff Woodard
Clerk

Senate

20-MAY-13

Passed

APPROVED

May 23, 2013

TIME

3:32 p.m.

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2013-355
Bill Num...: H-396

Recv'd 05/24/13 11:21amSLF

SPONSOR

Blachly, M

SPONSORS

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Premie Date

HOUSE ACTION

Judy

DATE: 3-7 2013

RD 1 RFD *Judy*

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Judiciary was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) w/sub this 13 day of March, 20 13.

Rand DeMarco, Chairperson

DATE: 3-20 2013

RF RD 2 CAL

DATE: 20

RE-REFERRED RE-COMMITTED

Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 394.

YEAS 97 NAYS 0

JEFF WOODARD, Clerk

SENATE ACTION

DATE: 4-30 2013

RD 1 RFD *Judy*

This Bill was referred to the Standing Committee of the Senate on Judy

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amd(s) w/sub w/eng sub by a vote of 8 nays 0 abstain 0 this 1 day of May, 20 13.

Concord, Chairperson

DATE: 5-2 20

RF FAV RD 2 CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 394.

YEAS 19 NAYS 3

PATRICK HARRIS, Secretary

DATE: 5-20-13 RD 3 at length

PASSED PASSED AS AMENDED

YEAS 19 NAYS 3

And was ordered returned forthwith to the House.

PATRICK HARRIS, Secretary

DATE: 20

INDEFINITELY POSTPONED YEARS NAYS

DATE: 20

INDEFINITELY POSTPONED YEARS NAYS