

[First Reprint]

**SENATE, No. 1224**

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**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

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INTRODUCED JANUARY 30, 2014

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Senators Bateman, Stack, P.Barnes, III and Allen**

**SYNOPSIS**

Establishes the “New Jersey Family Collaborative Law Act.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on March 24, 2014, with amendments.



**(Sponsorship Updated As Of: 6/27/2014)**

1 AN ACT concerning <sup>1</sup>**collaborative**<sup>1</sup> family collaborative<sup>1</sup> law  
2 and supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “New Jersey  
8 <sup>1</sup>**Collaborative**<sup>1</sup> Family Collaborative<sup>1</sup> Law Act.”

9

10 2. The Legislature finds and declares:

11 a. Since at least 2005, attorneys in New Jersey have  
12 participated in the dispute resolution method known as family<sup>1</sup>  
13 collaborative law, in which an attorney is retained for the limited  
14 purpose of assisting his client in resolving family<sup>1</sup> disputes in a  
15 voluntary, non-adversarial manner, without court intervention.

16 b. The family<sup>1</sup> collaborative law process is distinct from other  
17 dispute resolution mechanisms because the parties intend to resolve  
18 their dispute without litigation. Instead, each party, represented by  
19 his attorney, meets together with the other party to the dispute, that  
20 party’s attorney, and, as needed, one or more nonparty participants  
21 who are not attorneys but are professionals in their fields, such as  
22 certified financial planners, certified public accountants, licensed  
23 clinical social workers, psychologists, licensed professional  
24 counselors, licensed marriage and family therapists, and  
25 psychiatrists. All participants in the family<sup>1</sup> collaborative law  
26 process understand and agree that the process is intended to replace  
27 litigation and that the process will terminate if either party or either  
28 attorney commences a proceeding related to the subject matter to be  
29 addressed through the family<sup>1</sup> collaborative process before a court  
30 or other tribunal other than to seek incorporation of a settlement  
31 agreement into a final judgment.

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

43

44 3. As used in this act:

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly SJU committee amendments adopted March 24, 2014.

- 1 a. **1**“Collaborative family” **1**“Family collaborative”**1** law  
2 communication” means a statement, whether oral or in a record, that  
3 is made in the course of a **1**“collaborative”**1** family **1**“collaborative”**1**  
4 law process and occurs after the parties sign a **1**“collaborative”**1**  
5 family **1**“collaborative”**1** law participation agreement but before the  
6 **1**“collaborative”**1** family **1**“collaborative”**1** law process is concluded.
- 7 b. **1**“Collaborative family” **1**“Family collaborative”**1**  
8 participation agreement” means a written agreement by the parties  
9 to participate in a **1**“collaborative”**1** family **1**“collaborative”**1** law  
10 process, in accordance with section 5 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill) in order to resolve their  
12 family law dispute.
- 13 c. **1**“Collaborative family” **1**“Family collaborative”**1** law  
14 process” means a procedure intended to resolve the family law  
15 dispute without intervention by a tribunal provided that the  
16 individuals in the dispute: (1) sign a **1**“collaborative”**1** family  
17 **1**“collaborative”**1** law participation agreement; and (2) are represented  
18 by **1**“collaborative”**1** family **1**“collaborative”**1** lawyers.
- 19 d. **1**“Collaborative family” **1**“Family collaborative”**1** lawyer”  
20 means a lawyer who represents a party in a **1**“collaborative”**1** family  
21 **1**“collaborative”**1** law process and whom the party acknowledges is  
22 retained for that limited purpose.
- 23 e. “Family law dispute” means a dispute, claim or issue which  
24 is described in a participation agreement and arises under the family  
25 or domestic relations law of this State, including but not limited to:  
26 (1) marriage, civil union, domestic partnership, divorce,  
27 dissolution, annulment, or property distribution;  
28 (2) child custody, visitation, or parenting time;  
29 (3) alimony, maintenance, or child support; or  
30 (4) premarital, marital or post-marital agreements, or  
31 comparable agreements affecting civil unions or domestic  
32 partnerships.
- 33 f. “Nonparty participant” means a person, other than a party  
34 and the party’s **1**“collaborative”**1** family **1**“collaborative”**1** lawyer,  
35 who participates in a **1**“collaborative”**1** family **1**“collaborative”**1** law  
36 process. **1**This includes, but is not limited to, financial practitioners,  
37 including certified financial planners and certified public  
38 accountants, and mental health professionals, including licensed  
39 clinical social workers, psychologists, licensed professional  
40 counselors, licensed marriage and family therapists, and  
41 psychiatrists.**1**
- 42 g. “Party” means an individual who signs a **1**“collaborative”**1**  
43 family **1**“collaborative”**1** law participation agreement and whose  
44 consent is necessary to resolve a family law dispute under P.L. ,  
45 c. (C. ) (pending before the Legislature as this bill).

- 1 h. “Proceeding” means a judicial or arbitral or adjudicative  
2 process before a tribunal.
- 3 i. “Prospective party” means an individual who discusses with  
4 a prospective **1**collaborative**1** family 1collaborative<sup>1</sup> lawyer the  
5 possibility of signing a **1**collaborative**1** family 1collaborative<sup>1</sup> law  
6 participation agreement.
- 7 j. “Record” means information that is inscribed on a tangible  
8 medium or that is stored in an electronic or other medium and is  
9 retrievable in perceivable form.
- 10 k. “Related to the family law dispute” means involving the  
11 same parties, transaction or occurrence, nucleus of operative fact,  
12 claim, matter or issue as the family law dispute.
- 13 l. “Settlement agreement” means a signed agreement entered  
14 into by the parties to a **1**collaborative**1** family 1collaborative<sup>1</sup> law  
15 participation agreement that sets forth a resolution of the parties’  
16 family law dispute.
- 17 m. “Sign” means, with present intent to authenticate or adopt a  
18 record to execute or adopt a tangible symbol; or attach to or  
19 logically associate with the record an electronic symbol, sound, or  
20 process.
- 21 n. “Tribunal” means a court, arbitrator, or administrative  
22 agency, as applicable, that after presentation of evidence or legal  
23 argument, has jurisdiction to render a decision affecting a party’s  
24 interests in a matter.
- 25
- 26 4. P.L. , c. (C. ) (pending before the Legislature as  
27 this bill) applies to a **1**collaborative**1** family 1collaborative<sup>1</sup> law  
28 process that is subject to a **1**collaborative**1** family 1collaborative<sup>1</sup>  
29 law participation agreement, meets the requirements set forth in  
30 section 5 of P.L. , c. (C. ) (pending before the Legislature  
31 as this bill), and is signed on or after the effective date of this act.
- 32 P.L. , c. (C. ) (pending before the Legislature as this  
33 bill) does not apply to any other collaborative law process or any  
34 other collaborative law participation agreement.  
35 or any other collaborative law participation agreement.
- 36
- 37 5. a. A **1**collaborative**1** family 1collaborative<sup>1</sup> law  
38 participation agreement shall:
- 39 (1) be in a record;  
40 (2) be signed by the parties;  
41 (3) state the parties’ intention to resolve a family law dispute  
42 through a **1**collaborative**1** family 1collaborative<sup>1</sup> law process  
43 pursuant to P.L. , c. (C. ) (pending before the Legislature  
44 as this bill);  
45 (4) describe the nature and scope of the family law dispute;  
46 (5) identify the **1**collaborative**1** family 1collaborative<sup>1</sup> lawyer  
47 who represents each party in the process;

1 (6) contain a statement that a **1** **collaborative** **1** family  
2 collaborative **1** lawyer's role is limited as defined in P.L. ,  
3 c. (C. ) (pending before the Legislature as this bill),  
4 consistent with the Rules of Professional Conduct promulgated by  
5 the Supreme Court of New Jersey;

6 (7) set forth the manner by which a **1** **collaborative** **1** family  
7 collaborative **1** law process begins and the manner by which it  
8 terminates or concludes in accordance with sections 6 and 7 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill);

10 (8) state that any **1** **collaborative** **1** family collaborative **1** law  
11 communication of a party or a nonparty participant is confidential  
12 and subject to an evidentiary privilege under section **1** **12** **13** **1** of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill),  
14 and that the privilege may be waived only expressly and by both  
15 parties or in the case of a nonparty participant, by the nonparty  
16 participant having the right to exercise the privilege; and

17 (9) state that the conduct of the **1** **collaborative** **1** family  
18 collaborative **1** lawyer is governed by P.L. , c. (C. )  
19 (pending before the Legislature as this bill), the Rules of Court  
20 adopted by the Supreme Court of New Jersey, and the Rules of  
21 Professional Conduct promulgated by the Supreme Court of New  
22 Jersey and that P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) does not alter the **1** **collaborative** **1** family  
24 collaborative **1** lawyer's responsibilities to the client under the  
25 Rules of Professional Conduct and any other applicable Rules of  
26 Court.

27 b. Parties may agree to include in a **1** **collaborative** **1** family  
28 collaborative **1** law participation agreement additional provisions  
29 not inconsistent with P.L. , c. (C. ) (pending before the  
30 Legislature as this bill) or other applicable law.

31  
32 6. a. A **1** **collaborative** **1** family collaborative **1** law process  
33 begins when the parties sign a **1** **collaborative** **1** family  
34 collaborative **1** law participation agreement.

35 b. Participation in a **1** **collaborative** **1** family collaborative **1**  
36 law process is voluntary and may not be compelled by a tribunal.  
37

38 7. a. A **1** **collaborative** **1** family collaborative **1** law process is  
39 concluded by either:

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

42 (2) termination of the process.

43 b. A **1** **collaborative** **1** family collaborative **1** law process  
44 terminates when:

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

- 1 (2) a party files a document without the agreement of all parties  
2 that initiates a proceeding related to the family law dispute; or
- 3 (3) either party is subject to, or obtains, a temporary or final  
4 restraining order against the other party<sup>1</sup> in accordance with the  
5 “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261  
6 (C.2C:25-17 et seq.); or
- 7 (4) an action is commenced requesting that a tribunal issue  
8 emergency relief to protect the health, safety, welfare, or interests  
9 of a party or the defense against such a request is commenced; or
- 10 (5) except as provided by section **1[8] 9**<sup>1</sup> of P.L. , c. (C. )  
11 (pending before the Legislature as this bill), a party discharges a  
12 **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> lawyer; or
- 13 (6) a party fails to provide information pursuant to section **1[9]**  
14 10<sup>1</sup> of P.L. , c. (C. ) (pending before the Legislature as  
15 this bill) that is necessary to address the issues in dispute, and one  
16 of the parties chooses to terminate the collaborative process as a  
17 result; or
- 18 (7) a **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> lawyer ceases  
19 further representation of a party.
- 20 c. A **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> law process does  
21 not terminate if, with the consent of the parties, a party, or the  
22 party’s **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> lawyer on the  
23 party’s behalf, requests a tribunal to incorporate a settlement  
24 agreement into a final judgment.
- 25 d. A **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> law participation  
26 agreement may provide additional methods of terminating or  
27 concluding a **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> law process  
28 consistent with P.L. , c. (C. ) (pending before the Legislature  
29 as this bill) and the Rules of Professional Conduct promulgated by  
30 the Supreme Court of New Jersey.
- 31 e. In the event the **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> law  
32 process does not result in a judgment resolving the family law  
33 dispute and the dispute is, instead, submitted to a tribunal for  
34 adjudication, the **1[collaborative]**<sup>1</sup> family collaborative<sup>1</sup> lawyer  
35 and the lawyers in the law firm with whom the collaborative  
36 family lawyer is associated<sup>1</sup> shall not continue to represent the party  
37 in that family law dispute.
- 38
- 39 18. A lawyer in a law firm with which the family collaborative  
40 lawyer is associated in a partnership, professional corporation, sole  
41 proprietorship, limited liability company, or law association is  
42 disqualified from appearing before a tribunal to represent a party in  
43 a proceeding related to a family collaborative law matter if the  
44 family collaborative lawyer is disqualified from doing so in  
45 subsection e. of section 7 of P.L. , c. (C. ) (pending before  
46 the Legislature as this bill).<sup>1</sup>

1 **1[8.] 9.**<sup>1</sup> a. If a **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup>  
2 lawyer ceases or is disqualified from representation of a party,  
3 prompt notice of the cessation of representation or discharge shall  
4 be given to all parties in a record.

5 b. Notwithstanding the provisions of paragraph (5) of  
6 subsection b. of section 7 of P.L. , c. (C. ) (pending before  
7 the Legislature as this bill), and subject to this subsection, if a  
8 **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup> lawyer is discharged or  
9 ceases representation of a party, the **1[collaborative]**<sup>1</sup> family  
10 **1collaborative**<sup>1</sup> law process continues if, not later than 30 days after  
11 the date of notice of the discharge or cessation of representation is  
12 sent to the parties pursuant to subsection a. of this section, the  
13 unrepresented party:

14 (1) retains a successor **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup>  
15 lawyer who is identified in an amended **1[collaborative]**<sup>1</sup> family  
16 **1collaborative**<sup>1</sup> law participation agreement; and

17 (2) in that amended **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup> law  
18 participation agreement, the parties consent to continue the process  
19 and the successor lawyer confirms representation of the party.  
20

21 **1[9.] 10.**<sup>1</sup> Except as otherwise provided by law, during the  
22 **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup> law process a party shall,  
23 in good faith, provide timely, full, and candid disclosure of  
24 information related to the family law dispute without formal  
25 discovery. A party shall also promptly update previously disclosed  
26 information that has materially changed. The parties may define the  
27 scope of disclosure during the collaborative family law process  
28 except as provided by law.  
29

30 **1[10.] 11.**<sup>1</sup> P.L. , c. (C. ) (pending before the  
31 Legislature as this bill) does not affect, waive or supersede:

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

36 b. The obligation of a person to report abuse or neglect,  
37 abandonment, or exploitation of a child or adult under the law of  
38 this State.  
39

40 **1[11.] 12.**<sup>1</sup> A **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup> law  
41 communication is confidential to the extent agreed to by the parties  
42 in a signed record or as provided by law.  
43

44 **1[12.] 13.**<sup>1</sup> a. Subject to sections **1[13] 14**<sup>1</sup> and **1[14] 15**<sup>1</sup> of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill),  
46 a **1[collaborative]**<sup>1</sup> family **1collaborative**<sup>1</sup> law communication made  
47 by a party or any nonparty participant is privileged under subsection

1 b. of this section, is not subject to discovery, and is not admissible  
2 in evidence.

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

6 (1) A party may refuse to disclose, and may prevent the party's  
7 lawyer, or a nonparty participant, or any other person from  
8 disclosing, a **'[collaborative]'** family 'collaborative' law  
9 communication.

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

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

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

27

28 **'[13.] 14.'** a. A privilege under section **'[12] 13'** of P.L. ,  
29 c. (C. ) (pending before the Legislature as this bill) may be  
30 waived in a record or orally during a proceeding if it is expressly  
31 waived by both parties and, in the case of the privilege of a  
32 nonparty participant, it is also expressly waived by the nonparty  
33 participant.

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

41

42 **'[14.] 15.'** a. There is no privilege under section **'[12] 13'** of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill) for a  
44 **'[collaborative]'** family 'collaborative' law communication that is:

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



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

1 '【collaborative】' family 'collaborative' law process is not  
2 privileged.

3  
4 '【15.】 16.' If a '【collaborative】' family 'collaborative' law  
5 participation agreement fails to meet the requirements of section 5  
6 of P.L. , c. (C. ) (pending before the Legislature as this  
7 bill), the parties may be found to have intended to enter into a  
8 '【collaborative】' family 'collaborative' law participation  
9 agreement if they signed a record indicating an intention to enter  
10 into a '【collaborative】' family 'collaborative' law participation  
11 agreement and reasonably believed they were participating in a  
12 '【collaborative】' family 'collaborative' law process.

13  
14 '【16.】 17.' In applying and construing this act, consideration  
15 shall be given to the need to promote uniformity of the law with  
16 respect to its subject matter among states that enact a  
17 '【collaborative】' family 'collaborative' law act.

18  
19 '【17. This act modifies, limits, and supersedes the federal  
20 “Electronic Signatures in Global and National Commerce Act,” 15  
21 U.S.C. s.7001 et seq., but this act does not modify, limit, or  
22 supersede section 101(c) of that act, or authorize electronic delivery  
23 of any of the notices described in section 103(b) of that act.】'

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

33  
34 19. This act shall take effect on the 90th day after enactment.