Article 53.

Uniform Collaborative Law Act.

§ 1-641. Short title.

This Article may be cited as the Uniform Collaborative Law Act. (2020-65, s. 1.)

§ 1-642. Definitions.

The following definitions apply in this Article:

(1) Collaborative law communication. – A statement, whether oral or in a record, or verbal or nonverbal, that does all of the following:
   a. Is made to conduct, participate in, continue, or reconvene a collaborative law process.
   b. Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) Collaborative law participation agreement. – An agreement by persons to participate in a collaborative law process under this Article.

(3) Collaborative law process. – A procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons do all of the following:
   a. Sign a collaborative law participation agreement.
   b. Are represented by collaborative lawyers.

(4) Collaborative lawyer. – A lawyer who represents a party in a collaborative law process.

(5) Collaborative matter. – A dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement.

(6) Law firm. – Any of the following:
   a. Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association.
   b. Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) Nonparty participant. – A person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) Party. – A person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) Proceeding. – Any of the following:
   a. A judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.
   b. A legislative hearing or similar process.

(11) Prospective party. – A person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.
(12) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(13) Related to the collaborative matter. – Involving the same transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.
(14) Sign. – With present intent to authenticate or adopt a record to do any of the following:
a. Execute or adopt a tangible symbol.
b. Attach to or logically associate with the record an electronic symbol, sound, or process.
(15) Tribunal. – Any of the following:
a. A court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.
b. A legislative body conducting a hearing or similar process. (2020-65, s. 1.)

§ 1-643. Applicability; restrictions.

(a) Except as provided in subsection (b) of this section, this Article applies to a collaborative law participation agreement that meets the requirements of G.S. 1-644 signed on or after the effective date of this act.

(b) This Article does not apply to any claim or proceeding arising under Chapter 35A, 35B, or 50 of the General Statutes.

(c) Minors, unborn individuals, and individuals who are incompetent shall not be parties to a collaborative law process. (2020-65, s. 1.)

§ 1-644. Collaborative law participation agreement; requirements.

(a) A collaborative law participation agreement must meet all of the following requirements:
(1) Be in a record.
(2) Be signed by the parties and their collaborative lawyers.
(3) State the parties' intention to resolve a collaborative matter through a collaborative law process under this Article.
(4) Describe the nature and scope of the collaborative matter.
(5) Identify the collaborative lawyer who represents each party in the collaborative law process.
(6) Contain a statement by each collaborative lawyer confirming the collaborative lawyer's representation of a party in the collaborative law process.
(7) State that the collaborative lawyers are disqualified from representing their respective parties in a proceeding before a tribunal related to the collaborative matter, except as provided in G.S. 1-647, 1-649(c), 1-650, or 1-651.
(8) Provide an address for each party where any notice required under this Article may be sent.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this Article. (2020-65, s. 1.)

§ 1-645. Beginning and concluding collaborative law process; tolling of time periods.

(a) Participation in a collaborative law process is voluntary. A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal shall not order a person to participate in a collaborative law process over that person's objection.

(c) A collaborative law process is concluded by any of the following:

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

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

(3) Termination of the process.

(d) A collaborative law process terminates upon the occurrence of any of the following:

(1) When a party or collaborative lawyer gives notice to all other parties in a record that the collaborative law process is ended.

(2) When a party does any of the following:

a. Begins a proceeding related to the collaborative matter without the agreement of all parties, except as provided in G.S. 1-647.

b. In a pending proceeding related to the collaborative matter, does any of the following:

1. Without the agreement of all parties, initiates a pleading, motion, order to show cause, or request for a conference with the tribunal, except as provided in G.S. 1-647.

2. Requests that the proceeding be put on the tribunal's active calendar.

(3) Except as otherwise provided in subsection (g) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

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

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

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) of this section is sent to the parties, all of the following occur:

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

(2) In a signed record, all of the following occur:

a. The parties consent to continue the collaborative law process by reaffirming the collaborative law participation agreement.

b. The collaborative law participation agreement is amended to identify the successor collaborative lawyer.

c. The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative law process and adherence to the collaborative law participation agreement.

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

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

(j) A collaborative law participation agreement tolls all legal time periods applicable to legal rights and issues under law between the parties from the time the parties sign a collaborative law participation agreement until terminated as set forth in this subsection. This subsection applies to any applicable statutes of limitations, statutes of repose, filing deadlines, or other time limitations imposed by law, court rule, or court order. The tolling period continues until terminated by any party delivering notice to all other parties of an intent to terminate the tolling period. The notice shall be delivered by hand delivery or by certified mail, return receipt requested, to all other parties, and the tolling period terminates 30 days after receipt by the last party to receive the notice. (2020-65, s. 1.)

§ 1-646. Proceedings pending before tribunal; status report.

(a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the collaborative law participation agreement after it is signed. Subject to subsection (c) of this section and G.S. 1-647 and G.S. 1-648, the filing operates as a stay of the proceeding as to the parties in the collaborative law process as long as the parties are in that process.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) of this section is lifted when the notice is filed. The notice shall not specify any reason for termination of the collaborative law process.

(c) A tribunal in which a proceeding is stayed under subsection (a) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the collaborative law process is ongoing or concluded. It shall not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative matter.

(d) A tribunal shall not consider a communication made in violation of subsection (c) of this section.

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative law process is filed based on delay or failure to prosecute. (2020-65, s. 1.)

§ 1-647. Emergency order.

During a collaborative law process, a party may begin a proceeding and a tribunal may issue emergency orders upon motion of a party in that or an already pending proceeding to protect the health, safety, welfare, or interest of a party or otherwise preserve the status quo. (2020-65, s. 1.)

§ 1-648. Approval of agreement by tribunal.

A tribunal may approve an agreement resulting from a collaborative law process. (2020-65, s. 1.)

§ 1-649. Disqualification of collaborative lawyer and lawyers in associated law firm.

(a) Except as otherwise provided in subsection (c) of this section and G.S. 1-647, a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) of this section and G.S. 1-647, 1-650, and 1-651, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a) of this section.

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party to do any of the following:

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

(2) To seek or defend an emergency order in either a pending or newly filed proceeding to protect the health, safety, welfare, or interest of a party, or otherwise preserve the status quo.

(d) If subdivision (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may continue to represent a party:

(1) Until the party is represented by a successor lawyer or for no more than 30 days after the date any action is taken under subdivision (c)(2) of this section, whichever occurs first; or

(2) If the parties consent to continue the collaborative law process subject to any emergency order which may have been entered, in which event, any proceeding as referenced in subdivision (c)(2) of this section shall be stayed as provided in G.S. 1-646. (2020-65, s. 1.)

§ 1-650. Low-income parties.

(a) The disqualification under G.S. 1-649(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under G.S. 1-649(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if all of the following apply:

(1) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation.

(2) The collaborative law participation agreement so provides.

(3) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation. (2020-65, s. 1.)

§ 1-651. Governmental entity as party.

(a) The disqualification under G.S. 1-649(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if all of the following apply:

(1) The collaborative law participation agreement so provides.

(2) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation. (2020-65, s. 1.)

§ 1-652. Disclosure of information.

(a) Except as provided by subsection (b) of this section or by law other than this Article, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of all relevant information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed.

(b) The parties may define the scope and terms of the disclosure during the collaborative law process. (2020-65, s. 1.)

§ 1-653. Standards of professional responsibility not affected.

This Article does not affect the professional responsibility, obligations, and standards applicable to a lawyer or other licensed professional, including rules governing the confidentiality of information acquired by a lawyer during the professional relationship with a client. (2020-65, s. 1.)

§ 1-654. Informed consent.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall do all of the following:

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

(2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation. The information provided shall include the respective rules regarding privilege and confidentiality that apply to each of the alternative means of resolving disputes.

(3) Advise the prospective party that:

a. After signing a collaborative law participation agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates, except as provided in G.S. 1-647.

b. Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause.

c. The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated shall not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by G.S. 1-647, 1-649(c), 1-650(b), or 1-651(b). (2020-65, s. 1.)

§ 1-655. No liability for decision to participate.

No person incurs liability, either individually or in any fiduciary, official, or other capacity, with regard to the person's decision to participate or not to participate in a collaborative law process. (2020-65, s. 1.)

§ 1-656. Confidentiality of collaborative law communication.

A collaborative law communication shall not be disclosed to anyone other than a party, a party's collaborative lawyer, or a nonparty participant except to the extent agreed by the parties in a signed record or as provided by law of this State other than this Article. (2020-65, s. 1.)

§ 1-657. Privilege against disclosure for collaborative law communication; admissibility; discovery.

(a) Subject to G.S. 1-658 and G.S. 1-659, a collaborative law communication is privileged under subsection (b) of this section, is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

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

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

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process. (2020-65, s. 1.)

§ 1-658. Waiver and preclusion of privilege.

(a) A privilege under G.S. 1-657 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding shall not assert a privilege under G.S. 1-657, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation. (2020-65, s. 1.)

§ 1-659. Limits of privilege.

(a) There is no privilege under G.S. 1-657 for a collaborative law communication that is any of the following:

(1) Available to the public under Chapter 132 of the General Statutes or made during a session of a collaborative law process that is open, or is required by law to be open, to the public.
(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence.
(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity.
(4) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under G.S. 1-657 for a collaborative law communication do not apply to the extent that a collaborative law communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process.

(c) There is no privilege under G.S. 1-657 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in any of the following:

(1) A criminal action involving the prosecution of a felony.
(2) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c) of this section, only the part of the collaborative law communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under G.S. 1-657 do not apply if the parties agree in advance in a signed record or, if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the collaborative law communication was made. (2020-65, s. 1.)

§ 1-660. Authority of tribunal in case of noncompliance.

(a) If an agreement fails to meet the requirements of G.S. 1-644 or a lawyer fails to comply with G.S. 1-654, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they did both of the following:

(1) Signed a record indicating an intention to enter into a collaborative law participation agreement.
(2) Reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a) of this section and the interests of justice require, the tribunal may do all of the following:

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

(2) Apply the disqualification provisions in G.S. 1-645, 1-646, 1-647, 1-649, 1-650, and 1-651.
(3) Apply a privilege under G.S. 1-657. (2020-65, s. 1.)

§ 1-661. Alternative dispute resolution permitted.

Nothing in this Article prohibits the parties from using, by mutual agreement, other forms of nonadversarial alternate dispute resolution, including mediation, to reach a settlement on any of the issues included in the collaborative law participation agreement. The parties' collaborative lawyers may also serve as counsel for any form of nonadversarial alternate dispute resolution pursued as part of the collaborative law participation agreement so long as it is not a proceeding as that term is defined in G.S. 1-642(10). (2020-65, s. 1.)

§ 1-662. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (2020-65, s. 1.)

§ 1-663. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b). (2020-65, s. 1.)