

Session Law 2020-65, House Bill 32, effective October 1, 2020

Section 3 of S.L. 2020-65 reads: “The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Collaborative Law Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.”

Article 53 of Chapter 1 of the General Statutes

North Carolina Comments for the Uniform Collaborative Law Act

[§ 1-641. Short title.]

North Carolina Comment

Article 53 of Chapter 1 of the General Statutes is a modified version of the Uniform Collaborative Law Act (hereinafter “Uniform Act”) as approved in 2009, and amended in 2010, by the Uniform Law Commission. The Article reflects the enactment of the Uniform Act by legislation rather than by court rule or a combination of court rule and legislation—optional formats provided by the 2010 amendments to the Uniform Act. Enactment by legislation is consistent with the 2003 enactment of collaborative law provisions for resolving family law disputes under Article 4 (Collaborative Law Proceedings) of Chapter 50 of the General Statutes.

Two types of comments appear as annotations to various sections of Article 53. The comments prepared by the Uniform Law Commissioners appear under the designation “Official Comment.” Under the designation “North Carolina Comment” are the comments of the General Statutes Commission, which adapted the Uniform Act for enactment in North Carolina.

Some Official Comments refer to the Uniform Act’s Prefatory Note, which is available on the Uniform Law Commission’s website. Some Official Comments reflect that the Uniform Law Commission’s Drafting Committee recommends enactment of certain sections by court rule rather

than legislation. As previously noted, Article 53 reflects the enactment of the Uniform Act in its entirety by legislation.

The North Carolina Comments are designed to note substantive variations from the text of the Uniform Act. Non-substantive variations, such as those to conform to this State's numbering system and its stylistic drafting conventions, are not separately noted, since no change from the Uniform Act's meaning is intended. By way of example, the designators "a." and "b." and "1." and "2." were substituted for the Uniform Act's designators "(A)" and "(B)" and "(i)" and "(ii)" throughout the Article to conform to the numbering system used in the General Statutes. Other style changes include reformatting sections with lists and altering introductory and other language to account for the reformatting, capitalizing "state" when referring to North Carolina, adding "of this section" after subsection and subdivision references, using the entire defined term throughout the Article rather than a short form of the defined term, and using "shall not" rather than "may not."

[§ 1-642. Definitions.]

North Carolina Comment

In subdivision (2), "under this Article" was inserted for specificity.

Subdivision (5) reflects the Uniform Act's Alternative B definition of "collaborative matter" which places no substantive limitation on the scope of matters that can be submitted to a collaborative law process under the Article. See, however, G.S. 1-643 for applicability and restrictions.

In subdivision (13), "parties" was deleted from the Uniform Act's definition of "related to a collaborative matter" to exclude an unrelated matter involving the same parties from the definition.

[§ 1-643. Applicability; restrictions.]

North Carolina Comment

The section's catchline was modified by adding "restrictions." In subsection (a), "Except as provided in subsection (b) of this section" was added. Subsections (b) and (c) were added.

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

North Carolina Comment

In subdivision (a)(2), "and their collaborative lawyers" was added. Subdivisions (a)(7) and (8) were added.

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

North Carolina Comment

The section's catchline was modified by adding "tolling of time periods." Subsection (a) was modified to emphasize the voluntary nature of collaborative law by adding the sentence: "Participation in a collaborative law process is voluntary."

In subsection (b), "party" was changed to "person" and "party's" was changed to "person's" as being the more appropriate terms to use in the subsection.

In subdivision (d)(1), "or collaborative lawyer" and "all" were added to provide that a collaborative law process terminates "when a party or collaborative lawyer gives notice to all other parties in a record that the collaborative law process is ended."

In sub-subdivision (d)(2)a., "a collaborative matter" was changed to "the collaborative matter" and "except as provided in G.S. 1-647" was added.

In sub-sub-subdivision (d)(2)b.1., "Without the agreement of all parties" and "except as provided in G.S. 1-647" were added. The Uniform Act's Section 5(d)(2)(B)(iii), that is, "(iii) takes similar action requiring notice to be sent to the parties" was omitted as being unnecessary

considering sub-sub-subdivisions (d)(2)b.1. and (d)(2)b.2. and to eliminate any possible ambiguity.

In sub-subdivision (g)(2)c., “and adherence to the collaborative law participation agreement” was added for clarity.

Subsection (j) was added and, except for the provisions regarding termination of the tolling of time periods, is based on G.S. 50-73, the comparable provision in Article 4 (Collaborative Law Proceedings) of Chapter 50 of the General Statutes regarding family law disputes.

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

North Carolina Comment

In subsection (a), “an application for a stay of the proceeding” was changed to “a stay of the proceeding as to the parties in the collaborative law process as long as the parties are in that process.”

[§ 1-647. Emergency order.]

North Carolina Comment

This section of the Uniform Act was modified to add “a party may begin a proceeding and,” “upon motion of a party in that or an already pending proceeding,” and “otherwise preserve the status quo.”

[§ 1-648. Approval of agreement by tribunal.]

North Carolina Comment

This section is identical to Section 8 of the Uniform Act.

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

North Carolina Comment

In subsections (a) and (b), a cross reference to “G.S. 1-647” was added. In subdivision (c)(2), “in either a pending or newly filed proceeding” and “otherwise preserve the status quo” were added and “if a successor lawyer is not immediately available to represent that person” was omitted. Subsection (d) of the Uniform Act was restructured and rewritten.

[§ 1-650. Low income parties.]

North Carolina Comment

This section is substantively identical to Section 10 of the Uniform Act.

[§ 1-651. Governmental entity as party.]

North Carolina Comment

This section is substantively identical to Section 11 of the Uniform Act.

[§ 1-652. Disclosure of information.]

North Carolina Comment

This section was divided into two subsections. In subsection (a), “by subsection (b) of this section” and “all relevant” were added. In subsection (b), “The parties may define the scope of disclosure during the collaborative law process” was modified by adding “and terms.”

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

North Carolina Comment

This section was restructured to remove the Uniform Act’s provision regarding “the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.” Collaborative law procedures for the resolution of family law disputes are governed by Article 4 (Collaborative Law Proceedings) of Chapter 50 of the General Statutes. Also, “and mandatory reporting” was omitted from the section’s catchline, and the phrase

“including rules governing the confidentiality of information acquired by a lawyer during the professional relationship with a client” was added.

[§ 1-654. Informed consent.]

North Carolina Comment

The section’s catchline was rewritten for more precision. In subdivision (2), “prospective” was inserted immediately before “party” (second occurrence) and the following sentence was added: “The information provided shall include the respective rules regarding privilege and confidentiality that apply to each of the alternative means of resolving disputes.” In subdivision (3)a., “except as provided in G.S. 1-647” was added. In sub-subdivision (3)c., “G.S. 1-647” was added.

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

North Carolina Comment

This section has no counterpart in the Uniform Act.

[§ 1-656. Confidentiality of collaborative law communication.]

North Carolina Comment

This section was modified by changing “is confidential” to “shall not be disclosed to anyone other than a party, a party’s collaborative lawyer, or a non-party participant except.”

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

North Carolina Comment

This section is substantively identical to Section 17 of the Uniform Act.

[§ 1-658. Waiver and preclusion of privilege.]

North Carolina Comment

This section is substantively identical to Section 18 of the Uniform Act.

[§ 1-659. Limits of privilege.]

North Carolina Comment

This section is substantively identical to Section 19 of the Uniform Act except that it omits Section 19(b)(2) of the Uniform Act, which provides that the privileges under Section 17 of the Uniform Act do not apply to the extent that a collaborative law communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the child protective services agency or adult protective services agency is a party to or otherwise participates in the collaborative law process. Collaborative law procedures for the resolution of family law disputes are governed by Article 4 (Collaborative Law Proceedings) of Chapter 50 of the General Statutes.

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

North Carolina Comment

In subdivision (b)(2), a cross reference to G.S. 1-647 was added.

[§ 1-661. Alternate dispute resolution permitted.]

North Carolina Comment

This section has no counterpart in the Uniform Act and is modeled on G.S. 50-78, which allows parties to a collaborative law process in family law disputes to agree to use other forms of alternative dispute resolution. G.S. 1-661 allows parties to a collaborative law process to agree to use other nonadversarial forms of alternative dispute resolution to settle a collaborative matter and allows the parties' collaborative lawyers to serve as counsel for those forms of alternative dispute resolution.

[§ 1-662. Uniformity of application and construction.]

North Carolina Comment

This section is identical to Section 21 of the Uniform Act.

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

North Carolina Comment

This section is substantively identical to Section 22 of the Uniform Act.