

HOUSE BILL 3509

By Kernell

AN ACT to amend Tennessee Code Annotated, Title 20  
and Title 29, relative to resolution of disputes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 5, is amended by adding  
the following as a new part thereto:

29-5-401.

This part shall be known and may be cited as "The Collaborative Law Act".

29-5-402.

For purposes of this part unless the context requires otherwise:

(1) "Collaborative law communication" means a statement, whether oral or in a  
record, verbal or nonverbal, that:

(A) Occurs after the parties sign a collaborative law participation  
agreement but before the collaborative law process is concluded; and

(B) Is made for the purpose of conducting, participating in, continuing, or  
reconvening a collaborative law process;

(2) "Collaborative law participation agreement" means an agreement by two (2)  
or more persons to participate in a collaborative law process;

(3) "Collaborative law process" means a procedure intended to resolve a matter  
without intervention by a tribunal in which parties:

(A) Sign a collaborative law participation agreement; and

(B) Are represented by collaborative lawyers;

(4) "Collaborative lawyer" means a lawyer who represents a party in a  
collaborative law process;

(5) “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement. The term includes a dispute, claim, or issue in a proceeding;

(6) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a matter;

(7) “Person” means 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;

(8) “Proceeding” means:

(A) A judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) A legislative hearing or similar process;

(9) “Prospective party” means a person that discusses the possibility of signing a collaborative law participation agreement with a prospective collaborative lawyer;

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(11) “Related to a collaborative matter” or “related to a matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter;

(12) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process; and

(13) "Tribunal" means

(A) An arbitrator, administrative agency or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

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

29-5-403.

(a) This part shall apply to a collaborative law participation agreement that meets the requirements of § 29-5-404 and that is signed on or after July 1, 2013.

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

29-5-404.

(a) A collaborative law participation agreement shall:

(1) Be memorialized in a record;

(2) Be signed by the parties;

(3) State the parties' intention to resolve a matter through a collaborative law process under this part;

(4) Describe the nature and scope of the matter;

(5) Identify the collaborative lawyer who represents each party in the collaborative law process; and

(6) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) Parties to a collaborative law participation agreement may agree to include additional provisions not inconsistent with this part.

29-5-405.

A tribunal or court may approve an agreement resulting from a collaborative law process.

29-5-406.

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

(b) A collaborative law process is concluded by a:

(1) Negotiated resolution of the matter as evidenced by a signed record;

(2) Negotiated resolution of a portion of the matter as evidenced by a signed record where the parties agree that the remaining portions of the matter will not be resolved in the collaborative law process; or

(3) Termination of the process.

(c) A collaborative law process terminates:

(1) When a party gives notice in a record that the collaborative law process is ended; or

(2) When a party:

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

(B) In a pending proceeding related to the collaborative matter:

(i) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal or court;

(ii) Requests that the proceeding be put on the tribunal or court's active calendar; or

(iii) Takes similar action requiring notice to be sent to the parties.

(d) A party may terminate a collaborative law process with or without cause. A notice of termination need not specify a reason for terminating the process.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.