

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1126
Committee Substitute Favorable 4/23/03
Senate Judiciary I Committee Substitute Adopted 7/18/03

Short Title: Collaborative Law Procedures/Family Law.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER
3 CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING
4 A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY
5 WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Chapter 50 of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 4.

10 "Collaborative Law Proceedings.

11 "**§ 50-70. Collaborative law.**

12 As an alternative to judicial disposition of issues arising in a civil action under this
13 Article, except for a claim for absolute divorce, on a written agreement of the parties
14 and their attorneys, a civil action may be conducted under collaborative law procedures
15 as set forth in this Article.

16 "**§ 50-71. Definitions.**

17 As used in this article, the following terms mean:

- 18 (1) Collaborative law. – A procedure in which a husband and wife who are
19 separated and are seeking a divorce, or are contemplating separation
20 and divorce, and their attorneys agree to use their best efforts and
21 make a good faith attempt to resolve their disputes arising from the
22 marital relationship on an agreed basis. The procedure shall include an
23 agreement by the parties to attempt to resolve their disputes without
24 having to resort to judicial intervention, except to have the court
25 approve the settlement agreement and sign the orders required by law
26 to effectuate the agreement of the parties as the court deems
27 appropriate. The procedure shall also include an agreement where the

1 parties' attorneys agree not to serve as litigation counsel, except to ask
2 the court to approve the settlement agreement.

3 (2) Collaborative law agreement. – A written agreement, signed by a
4 husband and wife and their attorneys, that contains an
5 acknowledgement by the parties to attempt to resolve the disputes
6 arising from their marriage in accordance with collaborative law
7 procedures.

8 (3) Collaborative law procedures. – The process for attempting to resolve
9 disputes arising from a marriage as set forth in this Article.

10 (4) Collaborative law settlement agreement. – An agreement entered into
11 between a husband and wife as a result of collaborative law procedures
12 that resolves the disputes arising from the marriage of the husband and
13 wife.

14 (5) Third-party expert. – A person, other than the parties to a collaborative
15 law agreement, hired pursuant to a collaborative law agreement to
16 assist the parties in the resolution of their disputes.

17 **§ 50-72. Agreement requirements.**

18 A collaborative law agreement must be in writing, signed by all the parties to the
19 agreement and their attorneys, and must include provisions for the withdrawal of all
20 attorneys involved in the collaborative law procedure if the collaborative law procedure
21 does not result in settlement of the dispute.

22 **§ 50-73. Tolling of time periods.**

23 A validly executed collaborative law agreement shall toll all legal time periods
24 applicable to legal rights and issues under law between the parties for the amount of
25 time the collaborative law agreement remains in effect. This section applies to any
26 applicable statutes of limitations, filing deadlines, or other time limitations imposed by
27 law or court rule, including setting a hearing or trial in the case, imposing discovery
28 deadlines, and requiring compliance with scheduling orders.

29 **§ 50-74. Notice of collaborative law agreement.**

30 (a) No notice shall be given to the court of any collaborative law agreement
31 entered into prior to the filing of a civil action under this Article.

32 (b) If a civil action is pending, a notice of a collaborative law agreement, signed
33 by the parties and their attorneys, shall be filed with the court. After the filing of a
34 notice of a collaborative law agreement, the court shall take no action in the case,
35 including dismissal, unless the court is notified in writing that the parties have done one
36 of the following:

37 (1) Failed to reach a collaborative law settlement agreement.

38 (2) Both voluntarily dismissed the action.

39 (3) Asked the court to enter a judgment or order to make the collaborative
40 law settlement agreement an act of the court in accordance with G.S.
41 50-75.

42 **§ 50-75. Judgment on collaborative law settlement agreement.**

1 A party is entitled to an entry of judgment or order to effectuate the terms of a
2 collaborative law settlement agreement if the agreement is signed by each party to the
3 agreement.

4 **"§ 50-76. Failure to reach settlement; disposition by court; duty of attorney to**
5 **withdraw.**

6 (a) If the parties fail to reach a settlement and no civil action has been filed,
7 either party may file a civil action, unless the collaborative law agreement first provides
8 for the use of arbitration or alternative dispute resolution.

9 (b) If a civil action is pending and the collaborative law procedures do not result
10 in a collaborative law settlement agreement, upon notice to the court, the court may
11 enter orders as appropriate, free of the restrictions of G.S. 50-74(b).

12 (c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this
13 section, the attorneys representing the parties in the collaborative law proceedings may
14 not represent either party in any further civil proceedings and shall withdraw as attorney
15 for either party.

16 **"§ 50-77. Privileged and inadmissible evidence.**

17 (a) All statements, communications, and work product made or arising from a
18 collaborative law procedure are confidential and are inadmissible in any court
19 proceeding. Work product includes any written or verbal communications or analysis of
20 any third-party experts used in the collaborative law procedure.

21 (b) All communications and work product of any attorney or third-party expert
22 hired for purposes of participating in a collaborative law procedure shall be privileged
23 and inadmissible in any court proceeding, except by agreement of the parties.

24 **"§ 50-78. Alternate dispute resolution permitted.**

25 Nothing in this Article shall be construed to prohibit the parties from using, by
26 mutual agreement, other forms of alternate dispute resolution, including mediation or
27 binding arbitration, to reach a settlement on any of the issues included in the
28 collaborative law agreement. The parties' attorneys for the collaborative law proceeding
29 may also serve as counsel for any form of alternate dispute resolution pursued as part of
30 the collaborative law agreement.

31 **"§ 50-79. Collaborative law procedures surviving death.**

32 Consistent with G.S. 50-20(1), the personal representative of the estate of a deceased
33 spouse may continue a collaborative law procedure with respect to equitable distribution
34 that has been initiated by a collaborative law agreement prior to death, notwithstanding
35 the death of one of the spouses. The provisions of G.S. 50-73 shall apply to time limits
36 applicable under G.S. 50-20(1) for collaborative law procedures continued pursuant to
37 this section."

38 **SECTION 2.** This act becomes effective October 1, 2003.