

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 402

Introduced by Assembly Member Dymally

February 15, 2005

~~An act to amend Section 8709 of the Government Code, relating to borders. An act to add Section 2013 to the Family Code, relating to family law.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 402, as amended, Dymally. ~~Borders: Mexico. Family law court: marriage.~~

Existing law establishes procedures related to proceedings for dissolution of marriage, nullity of marriage, and legal separation, as specified.

This bill would enact the Collaborative Family Law Act, which would allow the parties to those proceedings, by written agreement, to utilize a collaborative law process, as specified, to resolve those disputes, rather than through an adversarial judicial proceeding. The bill would deem any agreement or statement made during the process confidential and inadmissible in any further proceeding, and would prohibit the court from intervening during that time. If the process terminates without settlement, the bill would then require each party to hire new counsel or represent themselves in any further proceeding, and would require the court to set a case management conference for any petition previously filed, if any.

~~Existing law establishes in state government an Office of California-Mexico Affairs, which includes the operations of the Commission of the Californias and the California Office of the Southwest Border Regional Conference. Existing law requires the Governor to appoint a director of the office and authorizes the Governor, as chairman of the commission, to appoint members to committees that may be established by the office.~~

~~This bill would clarify that among the committees the office may establish is a committee, made up of members who do not serve on the commission, for the purpose of advising the office on issues facing groups who are migrating, or have recently migrated, to California from Mexico.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Collaborative Family Law Act.
- 3 SEC. 2. Section 2013 is added to the Family Code, to read:
- 4 2013. (a) If a written agreement is entered into by the parties
- 5 and their attorneys, the parties may utilize a collaborative law
- 6 process to resolve any matter governed by this code over which
- 7 the court is granted jurisdiction pursuant to Section 2000.
- 8 (b) “Collaborative law process” means the process in which
- 9 the parties and their attorneys agree in writing to use their best
- 10 efforts and to make a good faith attempt to resolve disputes
- 11 related to family law matters as referenced in subdivision (a) on
- 12 an agreed basis without resorting to adversary judicial
- 13 intervention, except to file the initial petition and response,
- 14 stipulated orders or judgments, and accompanying documents as
- 15 may be required under this code, or to have the court approve
- 16 the settlement agreement, make the legal pronouncements, and
- 17 sign the orders required by law to effectuate the agreement of the
- 18 parties as the court determines appropriate. The parties’
- 19 attorneys may not serve as litigation counsel, except to ask the
- 20 court to approve the settlement agreement.
- 21 (c) If neither party files an initial petition for proceedings
- 22 pursuant to one of the issues listed in subdivision (a), at any time
- 23 during the collaborative law process the parties may agree in

1 writing to set jurisdiction over all issues to be heard by a court of
2 competent jurisdiction retroactive to any date as far back as the
3 date the parties entered into the collaborative law agreement.

4 (d) Sections 1115 to 1128, inclusive, of the Evidence Code,
5 regarding confidentiality protections on information exchanged
6 in mediation, shall also apply to collaborative law proceedings.

7 (1) All statements, communications, and work product made
8 or arising from a collaborative family law case are confidential
9 and are inadmissible in any court proceeding, except by written
10 agreement by the parties.

11 (2) Work product includes, but is not limited to, any written or
12 oral communication between the parties and their attorneys, and
13 written or oral communication, reports, or analysis of any third
14 party professional or expert used in the collaborative law
15 process.

16 (3) Notwithstanding this subdivision and the confidential
17 nature of the collaborative law process, all written agreements
18 entered into by the parties during the collaborative law process
19 are deemed inadmissible in court.

20 (e) If the collaborative law process terminates without
21 settlement, each party shall seek new counsel or represent
22 himself or herself in order to proceed in litigation. Neither
23 attorney in the collaborative law process may act as litigation
24 counsel for either party.

25 (f) Pursuant to paragraph (3) of subdivision (d), all written
26 agreements entered into by the parties during the collaborative
27 law process are deemed inadmissible in court, notwithstanding
28 the termination of the process or the confidential nature of the
29 collaborative law process.

30 (g) The collaborative law agreement shall include, but not be
31 limited to, provisions for all of the following:

32 (1) The parties' full compliance with disclosure requirements
33 under Chapter 9 (commencing with Section 2100) and candid
34 exchange of all information between the parties and their
35 attorneys as necessary to make a proper evaluation of the case,
36 including, but not limited to, each party's preliminary
37 declaration of disclosure, income and expense declaration, and
38 schedule of assets and debts, all under penalty of perjury,
39 pursuant to Section 2104.

1 (2) Suspending court intervention in the dispute while the
2 parties and their attorneys are using collaborative law
3 procedures requiring court appearances pursuant to local county
4 rules.

5 (3) Provisions for jointly hiring mental health, financial, or
6 other professionals to serve as joint experts to assist the parties
7 in the investigation, evaluation, or resolution of issues, as well as
8 assisting the parties in making informed decisions.

9 (4) Withdrawal of all attorneys involved in the collaborative
10 law process if the process does not result in settlement of the
11 dispute.

12 (5) Expectation that the parties and attorneys shall use their
13 best efforts and good faith to resolve the dissolution of marriage
14 through the collaborative law process.

15 (h) A court that is notified 30 days before trial that the parties
16 are using the collaborative law process to attempt to settle a
17 dispute may not, until a party notifies the court that the
18 collaborative law process did not result in a settlement, do any of
19 the following:

20 (1) Set a hearing or trial in the case.

21 (2) Impose discovery deadlines.

22 (3) Require compliance with pretrial orders.

23 (4) Dismiss the case.

24 (i) The parties shall notify the court if the collaborative law
25 process results in a settlement.

26 (j) If the collaborative law process does not result in a
27 settlement on or before two years of the date that the petition was
28 filed, if any, the court may set the matter for a case management
29 conference.

30 ~~SECTION 1. Section 8709 of the Government Code is~~
31 ~~amended to read:~~

32 ~~8709. The office shall be responsible for the establishment of~~
33 ~~committees in those topic areas deemed necessary by the~~
34 ~~director, including a committee, made up of members who do not~~
35 ~~serve on the commission, for the purpose of advising the office~~
36 ~~on issues facing groups who are migrating, or have recently~~
37 ~~migrated, to California from Mexico. Membership on the~~
38 ~~committees shall be at the pleasure of the appointing power. The~~
39 ~~appointing authority for the committees within the commission~~
40 ~~shall be the chairman of the commission. Recommendations of~~

- 1 ~~the committees shall not be binding on the Governor or the~~
- 2 ~~Legislature but shall only be advisory in nature.~~

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