

AN ACT

To amend sections 2317.02, 3105.18, and 3105.64 and to enact sections 3105.41, 3105.42, 3105.43, 3105.44, 3105.45, 3105.46, 3105.47, 3105.48, 3105.49, 3105.50, 3105.51, 3105.52, 3105.53, and 3105.54 of the Revised Code to establish a statutory collaborative family law process to aid in the resolution of family law disputes, to clarify when an order of spousal support may be modified, and to clarify the circumstances under which a client's statements may compel an attorney to testify regarding attorney-client communications.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2317.02, 3105.18, and 3105.64 be amended and sections 3105.41, 3105.42, 3105.43, 3105.44, 3105.45, 3105.46, 3105.47, 3105.48, 3105.49, 3105.50, 3105.51, 3105.52, 3105.53, and 3105.54 of the Revised Code be enacted to read as follows:

Sec. 2317.02. The following persons shall not testify in certain respects:

(A)(1) An attorney, concerning a communication made to the attorney by a client in that relation or concerning the attorney's advice to a client, except that the attorney may testify by express consent of the client or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of the deceased client. However, if the client voluntarily ~~testifies~~ reveals the substance of attorney-client communications in a nonprivileged context or is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the attorney may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply concerning a communication between a client who has since died and the deceased client's attorney if the communication is relevant to a dispute between parties who claim through that deceased client, regardless of

whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased client when the deceased client executed a document that is the basis of the dispute or whether the deceased client was a victim of fraud, undue influence, or duress when the deceased client executed a document that is the basis of the dispute.

(2) An attorney, concerning a communication made to the attorney by a client in that relationship or the attorney's advice to a client, except that if the client is an insurance company, the attorney may be compelled to testify, subject to an in camera inspection by a court, about communications made by the client to the attorney or by the attorney to the client that are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communications has made a prima-facie showing of bad faith, fraud, or criminal misconduct by the client.

(B)(1) A physician or a dentist concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (B)(2), and division (B)(3) of this section, and except that, if the patient is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the physician may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent;

(iii) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(b) In any civil action concerning court-ordered treatment or services

received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(c) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.

(d) In any criminal action against a physician or dentist. In such an action, the testimonial privilege established under this division does not prohibit the admission into evidence, in accordance with the Rules of Evidence, of a patient's medical or dental records or other communications between a patient and the physician or dentist that are related to the action and obtained by subpoena, search warrant, or other lawful means. A court that permits or compels a physician or dentist to testify in such an action or permits the introduction into evidence of patient records or other communications in such an action shall require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the records is maintained. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(e)(i) If the communication was between a patient who has since died and the deceased patient's physician or dentist, the communication is relevant to a dispute between parties who claim through that deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased patient when the deceased patient executed a document that is the basis of the dispute or whether the deceased patient was a victim of fraud, undue influence, or duress when the deceased patient executed a document that is the basis of the dispute.

(ii) If neither the spouse of a patient nor the executor or administrator of that patient's estate gives consent under division (B)(1)(a)(ii) of this section, testimony or the disclosure of the patient's medical records by a physician, dentist, or other health care provider under division (B)(1)(e)(i) of this section is a permitted use or disclosure of protected health information, as defined in 45 C.F.R. 160.103, and an authorization or opportunity to be heard shall not be required.

(iii) Division (B)(1)(e)(i) of this section does not require a mental health professional to disclose psychotherapy notes, as defined in 45 C.F.R. 164.501.

(iv) An interested person who objects to testimony or disclosure under division (B)(1)(e)(i) of this section may seek a protective order pursuant to Civil Rule 26.

(v) A person to whom protected health information is disclosed under division (B)(1)(e)(i) of this section shall not use or disclose the protected health information for any purpose other than the litigation or proceeding for which the information was requested and shall return the protected health information to the covered entity or destroy the protected health information, including all copies made, at the conclusion of the litigation or proceeding.

(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.

(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person

under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.

(3)(a) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(a)(iii) of this section, a physician or dentist may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(b) If the testimonial privilege described in division (B)(1) of this section does not apply to a physician or dentist as provided in division (B)(1)(c) of this section, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of results submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision the results were compiled.

(4) The testimonial privilege described in division (B)(1) of this section is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

(5)(a) As used in divisions (B)(1) to (4) of this section, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, "health care provider" means a hospital, ambulatory care facility, long-term care facility,

pharmacy, emergency facility, or health care practitioner.

(c) As used in division (B)(5)(b) of this section:

(i) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. "Ambulatory health care facility" does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(ii) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(iii) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code.

(iv) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(v) "Long-term care facility" means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; a residential facility licensed under section 5119.22 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code.

(d) As used in divisions (B)(1) and (2) of this section, "drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of

this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license

from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.

(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.

(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.

(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or

against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.06 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication made through a telecommunications relay service. Nothing in this section shall limit the obligation of a communications assistant to divulge information or testify when mandated by federal law or regulation or pursuant to subpoena in a criminal proceeding.

Nothing in this section shall limit any immunity or privilege granted under federal law or regulation.

(J)(1) A chiropractor in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, except as otherwise provided in this division. The testimonial privilege established under this division does not apply, and a chiropractor may testify or may be compelled to testify, in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(a) If the patient or the guardian or other legal representative of the patient gives express consent.

(b) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent.

(c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(2) If the testimonial privilege described in division (J)(1) of this section does not apply as provided in division (J)(1)(c) of this section, a chiropractor may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor's advice to the patient

in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(3) The testimonial privilege established under this division does not apply, and a chiropractor may testify or be compelled to testify, in any criminal action or administrative proceeding.

(4) As used in this division, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a chiropractor to diagnose, treat, or act for a patient. A communication may include, but is not limited to, any chiropractic, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.

(2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true:

(a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger.

(b) The individual who received crisis response services gives express consent to the testimony.

(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.

(f) The communication or advice pertains or is related to any criminal act.

(3) As used in division (K) of this section:

(a) "Crisis response services" means consultation, risk assessment, referral, and on-site crisis intervention services provided by a critical incident stress management team to individuals affected by crisis or disaster.

(b) "Critical incident stress management team member" or "team member" means an individual specially trained to provide crisis response services as a member of an organized community or local crisis response team that holds membership in the Ohio critical incident stress management network.

(c) "Debriefing session" means a session at which crisis response services are rendered by a critical incident stress management team member during or after a crisis or disaster.

(L)(1) Subject to division (L)(2) of this section and except as provided in division (L)(3) of this section, an employee assistance professional, concerning a communication made to the employee assistance professional by a client in the employee assistance professional's official capacity as an employee assistance professional.

(2) Division (L)(1) of this section applies to an employee assistance professional who meets either or both of the following requirements:

(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;

(b) Has education, training, and experience in all of the following:

(i) Providing workplace-based services designed to address employer and employee productivity issues;

(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;

(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;

(iv) Selecting and evaluating available community resources;

(v) Making appropriate referrals;

(vi) Local and national employee assistance agreements;

(vii) Client confidentiality.

(3) Division (L)(1) of this section does not apply to any of the following:

(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;

(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;

(c) A communication that is made by a client who is an unemancipated minor or an adult adjudicated to be incompetent and indicates that the client was the victim of a crime or abuse;

(d) A civil proceeding to determine an individual's mental competency or a criminal action in which a plea of not guilty by reason of insanity is entered;

(e) A civil or criminal malpractice action brought against the employee assistance professional;

(f) When the employee assistance professional has the express consent of the client or, if the client is deceased or disabled, the client's legal representative;

(g) When the testimonial privilege otherwise provided by division (L)(1) of this section is abrogated under law.

Sec. 3105.18. (A) As used in this section, "spousal support" means any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under section 3105.171 of the Revised Code.

(B) In divorce and legal separation proceedings, upon the request of either party and after the court determines the division or disbursement of property under section 3105.171 of the Revised Code, the court of common pleas may award reasonable spousal support to either party. During the pendency of any divorce, or legal separation proceeding, the court may award reasonable temporary spousal support to either party.

An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable.

Any award of spousal support made under this section shall terminate upon the death of either party, unless the order containing the award expressly provides otherwise.

(C)(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in

installments, the court shall consider all of the following factors:

(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

(b) The relative earning abilities of the parties;

(c) The ages and the physical, mental, and emotional conditions of the parties;

(d) The retirement benefits of the parties;

(e) The duration of the marriage;

(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

(g) The standard of living of the parties established during the marriage;

(h) The relative extent of education of the parties;

(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

(2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.

(D) In an action brought solely for an order for legal separation under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(E) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order

for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(F)(1) For purposes of divisions (D) and (E) of this section and subject to division (F)(2) of this section, a change in the circumstances of a party includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses, or other changed circumstances so long as both of the following apply:

(a) The change in circumstances is substantial and makes the existing award no longer reasonable and appropriate.

(b) The change in circumstances was not taken into account by the parties or the court as a basis for the existing award when it was established or last modified, whether or not the change in circumstances was foreseeable.

(2) In determining whether to modify an existing order for spousal support, the court shall consider any purpose expressed in the initial order or award and enforce any voluntary agreement of the parties. Absent an agreement of the parties, the court shall not modify the continuing jurisdiction of the court as contained in the original decree.

(G) If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, and before January 1, 1991, or any person required to pay spousal support under an order made or modified by a court on or after January 1, 1991, is found in contempt of court for failure to make alimony or spousal support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and shall require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

Sec. 3105.41. As used in sections 3105.41 to 3105.54 of the Revised

Code:

(A) "Collaborative family law communication" means any statement that occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded and that is made for the purpose of conducting, participating in, continuing, or reconvening a collaborative law process.

(B) "Collaborative family law participation agreement" means an agreement by persons to participate in a collaborative family law process.

(C) "Collaborative family law process" means a procedure intended to resolve a matter without intervention by a court in which parties sign a collaborative family law participation agreement and are represented by collaborative family lawyers.

(D) "Collaborative family lawyer" means a lawyer who represents a party in a collaborative family law process but does not include a lawyer who is a public official and who does not represent individuals other than public officials in their official capacities.

(E) "Collaborative matter" or "matter" means a dispute, transaction, claim, problem, or issue for resolution that arises under Title XXXI of the Revised Code and is described in a collaborative family law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(F) "Family or household member" has the same meaning as in section 3113.31 of the Revised Code.

(G) "Law firm" means an association of lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, lawyers employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(H) "Nonparty participant" means a person, other than a party and the party's collaborative family lawyer, that the parties expressly designate in writing, in a collaborative family law participation agreement or an amendment to that agreement, to participate in a collaborative family law process.

(I) "Party" means a person that signs a collaborative family law participation agreement and whose consent is necessary to resolve a matter.

(J) "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.

(K) "Proceeding" means a judicial, administrative, arbitral, or other

adjudicative process before a court, including related prehearing and posthearing motions, conferences, and discovery.

(L) "Public official" means an officer or employee of the state or any political subdivision of the state.

(M) "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.

(N) "Related to a collaborative family law 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.

(O) "Sign" means, with present intent to authenticate or adopt a record, to do either of the following:

(1) Execute or adopt a tangible symbol;

(2) Attach to or logically associate with the record an electronic symbol, sound, or process.

Sec. 3105.42. (A) Sections 3105.41 to 3105.54 of the Revised Code apply to a collaborative family law participation agreement that meets the requirements of section 3105.43 of the Revised Code and is signed on or after the effective date of this section.

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

Sec. 3105.43. (A) A collaborative family law participation agreement must be in a record, be signed by the parties, and include all of the following:

(1) A statement of the parties' intent to resolve a matter through a collaborative family law process under sections 3105.41 to 3105.55 of the Revised Code;

(2) A description of the nature and scope of the matter;

(3) The identity of the collaborative family lawyer who represents each party in the collaborative family law process;

(4) A statement by each collaborative family lawyer confirming the lawyer's representation of a party in the collaborative family law process.

(B) Parties to a collaborative family law participation agreement may agree to include additional provisions not inconsistent with sections 3105.41 to 3105.54 of the Revised Code.

Sec. 3105.44. (A) A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

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

(1) A negotiated resolution of the matter as evidenced by a signed

record:

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

(3) Termination of the process under division (C) of this section.

(C) A collaborative family law process terminates when any of the following occurs:

(1) A party gives notice in a record that the collaborative family law process is ended.

(2) A party does either of the following:

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

(b) In a pending proceeding related to the collaborative family law matter, does any of the following:

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

(ii) Requests that the proceeding be put on the court's docket;

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

(iv) Except as otherwise provided by division (E)(2) of this section, discharges a collaborative family lawyer.

(3) A collaborative family lawyer withdraws from further representation of a party.

(4) Termination occurs in any other way provided for in the collaborative family law participation agreement.

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

(E)(1) A collaborative family lawyer who is discharged or who withdraws shall give prompt notice in a record of the discharge or withdrawal to all other parties.

(2) Notwithstanding the discharge or withdrawal of a collaborative family lawyer, a collaborative family law process continues if the unrepresented party engages a successor collaborative family lawyer, and, in a signed record, all parties consent to continue the process by reaffirming the collaborative family law participation agreement, the collaborative family law participation agreement is amended to identify the successor collaborative family lawyer, and the successor collaborative family lawyer confirms the lawyer's representation of a party in the collaborative family law process.

(F) A collaborative family law process does not terminate if, with the

consent of all parties, a party requests a court to approve a negotiated resolution of the matter or any portion of the matter as evidenced by a signed record.

Sec. 3105.45. (A) Except as otherwise provided in division (C) of this section, a collaborative family lawyer may not appear before a court to represent a party in a proceeding related to the collaborative family law matter. A collaborative family lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality is subject to disqualification under this division.

(B) Except as otherwise provided in division (C) of this section, a lawyer in a law firm with which the collaborative family lawyer is associated may not appear before a court to represent a party in a proceeding related to the collaborative family law matter if the collaborative family lawyer is disqualified from doing so under division (A) of this section.

(C) A collaborative family lawyer or a lawyer in a law firm with which the collaborative family lawyer is associated may represent a party for the following purposes:

(1) To ask a court to approve an agreement resulting from the collaborative family law process;

(2) To seek or defend an emergency order to protect the health, safety, welfare, or interests of a party or of a family or household member of a party if a successor lawyer is not immediately available to represent the party or family or household member of the party. If a successor lawyer is not immediately available to represent the party or family or household member of the party, divisions (A) and (B) of this section do not apply until a successor lawyer assumes representation of the party or family or household member of the party or reasonable measures are taken to protect the health, safety, welfare, or interests of the party or family or household member of the party.

Sec. 3105.46. During the collaborative family law process, at the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as otherwise provided by law.

Sec. 3105.47. Sections 3105.41 to 3105.54 of the Revised Code do not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional or the statutory obligation of a person to report abuse or neglect of a child or adult.

Sec. 3105.48. A collaborative family law communication is confidential

to the extent agreed by the parties in a signed record or as provided by the law of this state.

Sec. 3105.49. (A) Subject to sections 3105.50 and 3105.51 of the Revised Code, a collaborative family law communication is privileged under division (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 family law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative family 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 by reason of its disclosure or use in a collaborative family law process.

Sec. 3105.50. (A) A privilege under section 3105.49 of the Revised Code 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 discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding may not assert a privilege under section 3105.49 of the Revised Code relating to that communication.

Sec. 3105.51. (A) There is no privilege under section 3105.49 of the Revised Code for a collaborative family law communication that is any of the following:

(1) Available to the public under section 149.43 of the Revised Code or made during a session of a collaborative family 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 family law process, evidenced by a record signed by all parties to the agreement.

(B) The privileges under section 3105.49 of the Revised Code for a collaborative family law communication do not apply to the extent that a communication is either of the following:

(1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a

collaborative family law process:

(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless a children's or protective service agency or an adult protective services agency is a party to or otherwise participates in the collaborative family law process.

(C) There is no privilege under section 3105.49 of the Revised Code if the communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(D) There is no privilege under section 3105.49 of the Revised Code if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in a criminal action or in a proceeding seeking rescission or reformation of a contract arising out of the collaborative family law process or in which a defense to avoid liability on the contract is asserted.

(E) If a collaborative family law communication is subject to an exception under division (B), (C), or (D) of this section, only the portion of the communication necessary for the application of the exception may be disclosed or admitted.

(F) Disclosure or admission of evidence excepted from the privilege under division (B), (C), or (D) of this section does not render the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.

(G) The privileges under section 3105.49 of the Revised Code 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 family law process is not privileged. This division does not apply to a collaborative family law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Sec. 3105.52. Even though a collaborative family law participation agreement fails to meet the requirements of section 3105.43 of the Revised Code, a court may find that the parties intended to enter into a collaborative family law participation agreement if the parties signed a record indicating an intention to enter into a collaborative family law participation agreement

and the parties reasonably believed they were participating in a collaborative family law process. If a court makes such a finding, sections 3105.41 to 3105.54 of the Revised Code apply to the same extent as if the parties had entered into a valid collaborative family law participation agreement.

Sec. 3105.53. Sections 3105.41 to 3105.54 of the Revised Code modify, limit, and supersede the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001, et seq., but do 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).

Sec. 3105.54. Sections 3105.41 to 3105.54 of the Revised Code may be cited as the "Ohio collaborative family law act."

Sec. 3105.64. (A) Except as provided in division (B) or (C) of this section, not less than thirty nor more than ninety days after the filing of a petition for dissolution of marriage, both spouses shall appear before the court, and each spouse shall acknowledge under oath that ~~he has~~ that spouse voluntarily entered into the separation agreement appended to the petition, that ~~he~~ that spouse is satisfied with its terms, and that ~~he~~ that spouse seeks dissolution of the marriage.

(B) If an action for divorce is converted to an action for dissolution of marriage pursuant to section 3105.08 of the Revised Code and if the conversion occurs more than thirty days after the filing of the original petition in the divorce action, the appearance and acknowledgement requirements of division (A) of this section may be satisfied at the time of the conversion or at a time that is not more than ninety days after the conversion.

(C) If a petition for dissolution is filed after the spouses have successfully completed a collaborative family law process pursuant to sections 3105.41 to 3105.54 of the Revised Code, the appearance and acknowledgement requirements of division (A) of this section may be satisfied at any time that is not more than ninety days after the filing of the petition.

SECTION 2. That existing sections 2317.02, 3105.18, and 3105.64 of the Revised Code are hereby repealed.

SECTION 3. (A) The General Assembly acknowledges the Ohio Supreme Court's authority in prescribing rules governing the rules of conduct for practicing attorneys in this state, as provided by Section 5 of Article IV of

the Ohio Constitution.

(B)(1) The General Assembly hereby respectfully requests the Ohio Supreme Court to amend the Rules of Professional Responsibility to require a collaborative family lawyer to disclose to clients in writing as part of a collaborative family law participation agreement both of the following:

(a) Information regarding the withdrawal and disqualification of the attorneys pursuant to section 3105.45 of the Revised Code should a settlement not be possible;

(b) Information about other available options for resolution or determination of family law matters.

(2) The goal of the disclosures under division (B)(1) of this section should be to ensure that clients make fully informed decisions about all available options.

(C) As used in this section, "collaborative family law participation agreement" has the same meaning as in section 3105.41 of the Revised Code.

SECTION 4. The proposed changes made by this act to section 3105.18 of the Revised Code are intended to abrogate *Mandelbaum v. Mandelbaum* (2009), 121 Ohio St.3d 433. Specifically, the proposed changes clarify (1) that "a change in circumstances" must be "substantial" so as to make the existing award no longer reasonable or appropriate; and (2) that the "change in circumstances" must be circumstances that were not taken into account by the parties or the court when the award was set or last modified, whether or not such circumstances were otherwise contemplated or foreseeable. The proposed changes are also intended to specify that other events may constitute a change in circumstances and to give courts guidance so that courts must consider any purpose expressed in the initial order or award, enforce any voluntary agreement of the parties, and only modify the continuing jurisdiction of the court as contained in the original decree if the parties agree.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 461

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____