

SHB 1116 - S COMM AMD
By Committee on Law & Justice

ADOPTED 04/15/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and
4 cited as the "uniform collaborative law act."

5 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

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

8 (a) Is made to conduct, participate in, continue, or reconvene a
9 collaborative law process; and

10 (b) Occurs after the parties sign a collaborative law participation
11 agreement and before the collaborative law process is concluded.

12 (2) "Collaborative law participation agreement" means an agreement
13 by persons to participate in a collaborative law process.

14 (3) "Collaborative law process" means a procedure intended to
15 resolve a collaborative matter without intervention by a tribunal in
16 which persons:

17 (a) Sign a collaborative law participation agreement; and

18 (b) Are represented by collaborative lawyers.

19 (4) "Collaborative lawyer" means a lawyer who represents a party in
20 a collaborative law process.

21 (5) "Collaborative matter" means a dispute, transaction, claim,
22 problem, or issue for resolution, including a dispute, claim, or issue
23 in a proceeding, which is described in a collaborative law
24 participation agreement.

25 (6) "Law firm" means:

26 (a) Lawyers who practice law together in a partnership,
27 professional corporation, sole proprietorship, limited liability
28 company, or association; and

1 (b) Lawyers employed in a legal services organization, or the legal
2 department of a corporation or other organization, or the legal
3 department of a government or governmental subdivision, agency, or
4 instrumentality.

5 (7) "Nonparty participant" means a person, other than a party and
6 the party's collaborative lawyer, that participates in a collaborative
7 law process.

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

11 (9) "Person" means an individual, corporation, business trust,
12 estate, trust, partnership, limited liability company, association,
13 joint venture, public corporation, government or governmental
14 subdivision, agency, or instrumentality, or any other legal or
15 commercial entity.

16 (10) "Proceeding" means a judicial, administrative, arbitral, or
17 other adjudicative process before a tribunal, including related
18 prehearing and posthearing motions, conferences, and discovery.

19 (11) "Prospective party" means a person that discusses with a
20 prospective collaborative lawyer the possibility of signing a
21 collaborative law participation agreement.

22 (12) "Record" means information that is inscribed on a tangible
23 medium or that is stored in an electronic or other medium and is
24 retrievable in perceivable form.

25 (13) "Related to a collaborative matter" means involving the same
26 parties, transaction or occurrence, nucleus of operative fact, dispute,
27 claim, or issue as the collaborative matter.

28 (14) "Sign" means, with present intent to authenticate or adopt a
29 record:

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

31 (b) To attach to or logically associate with the record an
32 electronic symbol, sound, or process.

33 (15) "Tribunal" means a court, arbitrator, administrative agency,
34 or other body acting in an adjudicative capacity which, after
35 presentation of evidence or legal argument, has jurisdiction to render
36 a decision affecting a party's interests in a matter.

1 NEW SECTION. **Sec. 3.** APPLICABILITY. (1) This chapter applies to
2 a collaborative law participation agreement that meets the requirements
3 of section 4 of this act signed on or after the effective date of this
4 section.

5 (2) The use of collaborative law applies only to matters that would
6 be resolved in civil court and may not be used to resolve matters in
7 criminal cases.

8 NEW SECTION. **Sec. 4.** COLLABORATIVE LAW PARTICIPATION AGREEMENT;
9 REQUIREMENTS. (1) A collaborative law participation agreement must:

- 10 (a) Be in a record;
11 (b) Be signed by the parties;
12 (c) State the parties' intention to resolve a collaborative matter
13 through a collaborative law process under this chapter;
14 (d) Describe the nature and scope of the matter;
15 (e) Identify the collaborative lawyer who represents each party in
16 the process; and
17 (f) Contain a statement by each collaborative lawyer confirming the
18 lawyer's representation of a party in the collaborative law process.

19 (2) Parties may agree to include in a collaborative law
20 participation agreement additional provisions not inconsistent with
21 this chapter.

22 NEW SECTION. **Sec. 5.** BEGINNING AND CONCLUDING COLLABORATIVE LAW
23 PROCESS. (1) A collaborative law process begins when the parties sign
24 a collaborative law participation agreement.

25 (2) A tribunal may not order a party to participate in a
26 collaborative law process over that party's objection.

27 (3) A collaborative law process is concluded by a:

28 (a) Resolution of a collaborative matter as evidenced by a signed
29 record;

30 (b) Resolution of a part of the collaborative matter, evidenced by
31 a signed record, in which the parties agree that the remaining parts of
32 the matter will not be resolved in the process; or

33 (c) Termination of the process.

34 (4) A collaborative law process terminates:

35 (a) When a party gives notice to other parties in a record that the
36 process is ended; or

1 (b) When a party:

2 (i) Begins a proceeding related to a collaborative matter without

3 the agreement of all parties; or

4 (ii) In a pending proceeding related to the matter:

5 (A) Initiates a pleading, motion, order to show cause, or request

6 for a conference with the tribunal without the agreement of all parties

7 as to the relief sought;

8 (B) Requests that the proceeding be put on the tribunal's active

9 calendar; or

10 (C) Takes similar contested action requiring notice to be sent to

11 the parties; or

12 (c) Except as otherwise provided by subsection (7) of this section,

13 when a party discharges a collaborative lawyer or a collaborative

14 lawyer withdraws from further representation of a party.

15 (5) A party's collaborative lawyer shall give prompt notice to all

16 other parties in a record of a discharge or withdrawal.

17 (6) A party may terminate a collaborative law process with or

18 without cause.

19 (7) Notwithstanding the discharge or withdrawal of a collaborative

20 lawyer, a collaborative law process continues, if not later than thirty

21 days after the date that the notice of the discharge or withdrawal of

22 a collaborative lawyer required by subsection (5) of this section is

23 sent to the parties:

24 (a) The unrepresented party engages a successor collaborative

25 lawyer; and

26 (b) In a signed record:

27 (i) The parties consent to continue the process by reaffirming the

28 collaborative law participation agreement;

29 (ii) The agreement is amended to identify the successor

30 collaborative lawyer; and

31 (iii) The successor collaborative lawyer confirms the lawyer's

32 representation of a party in the collaborative law process.

33 (8) A collaborative law process does not conclude if, with the

34 consent of the parties, a party requests a tribunal to approve a

35 resolution of the collaborative matter or any part thereof as evidenced

36 by a signed record.

37 (9) A collaborative law participation agreement may provide

38 additional methods of concluding a collaborative law process.

1 NEW SECTION. **Sec. 6.** PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS
2 REPORT. (1) Persons in a proceeding pending before a tribunal may sign
3 a collaborative law participation agreement to seek to resolve a
4 collaborative matter related to the proceeding. Parties shall file
5 promptly with the tribunal a notice of the agreement after it is
6 signed. Subject to subsection (3) of this section and sections 7 and
7 8 of this act, the filing operates as an application for a stay of the
8 proceeding.

9 (2) The parties shall file promptly with the tribunal notice in a
10 record when a collaborative law process concludes. The stay of the
11 proceeding under subsection (1) of this section is lifted when the
12 notice is filed. The notice may not specify any reason for termination
13 of the process.

14 (3) A tribunal in which a proceeding is stayed under subsection (1)
15 of this section may require the parties and collaborative lawyers to
16 provide a status report on the collaborative law process and the
17 proceeding. A status report may include only information on whether
18 the process is ongoing or concluded. It may not include a report,
19 assessment, evaluation, recommendation, finding, or other communication
20 regarding a collaborative law process or collaborative matter.

21 (4) A tribunal may not consider a communication made in violation
22 of subsection (3) of this section.

23 (5) A tribunal shall provide parties notice and an opportunity to
24 be heard before dismissing a proceeding in which a notice of
25 collaborative law process is filed based on delay or failure to
26 prosecute.

27 NEW SECTION. **Sec. 7.** EMERGENCY ORDER. During a collaborative law
28 process, a tribunal may issue emergency orders to protect the health,
29 safety, welfare, or interest of a party or a family or household
30 member, as defined in RCW 26.50.010.

31 NEW SECTION. **Sec. 8.** APPROVAL OF AGREEMENT BY TRIBUNAL. A
32 tribunal may approve an agreement resulting from a collaborative law
33 process.

34 NEW SECTION. **Sec. 9.** DISQUALIFICATION OF COLLABORATIVE LAWYER AND
35 LAWYERS IN ASSOCIATED LAW FIRM. (1) Except as otherwise provided in

1 subsection (3) of this section, a collaborative lawyer is disqualified
2 from appearing before a tribunal to represent a party in a proceeding
3 related to the collaborative matter.

4 (2) Except as otherwise provided in subsection (3) of this section
5 and section 10 of this act, a lawyer in a law firm with which the
6 collaborative lawyer is associated is disqualified from appearing
7 before a tribunal to represent a party in a proceeding related to the
8 collaborative matter if the collaborative lawyer is disqualified from
9 doing so under subsection (1) of this section.

10 (3) A collaborative lawyer or a lawyer in a law firm with which the
11 collaborative lawyer is associated may represent a party:

12 (a) To ask a tribunal to approve an agreement resulting from the
13 collaborative law process; or

14 (b) To seek or defend an emergency order to protect the health,
15 safety, welfare, or interest of a party, or family or household member,
16 as defined in RCW 26.50.010, if a successor lawyer is not immediately
17 available to represent that person.

18 (4) If subsection (3)(b) of this section applies, a collaborative
19 lawyer, or lawyer in a law firm with which the collaborative lawyer is
20 associated, may represent a party or family or household member only
21 until the person is represented by a successor lawyer or reasonable
22 measures are taken to protect the health, safety, welfare, or interest
23 of the person.

24 NEW SECTION. **Sec. 10.** GOVERNMENTAL ENTITY AS PARTY. (1) The
25 disqualification of section 9(1) of this act applies to a collaborative
26 lawyer representing a party that is a government or governmental
27 subdivision, agency, or instrumentality.

28 (2) After a collaborative law process concludes, another lawyer in
29 a law firm with which the collaborative lawyer is associated may
30 represent a government or governmental subdivision, agency, or
31 instrumentality in the collaborative matter or a matter related to the
32 collaborative matter if:

33 (a) The collaborative law participation agreement so provides; and

34 (b) The collaborative lawyer is isolated from any participation in
35 the collaborative matter or a matter related to the collaborative
36 matter through procedures within the law firm which are reasonably
37 calculated to isolate the collaborative lawyer from such participation.

1 NEW SECTION. **Sec. 11.** DISCLOSURE OF INFORMATION. Except as
2 provided by law other than this chapter, during the collaborative law
3 process, on the request of another party, a party shall make timely,
4 full, candid, and informal disclosure of information related to the
5 collaborative matter without formal discovery. A party also shall
6 update promptly previously disclosed information that has materially
7 changed. The parties may define the scope of disclosure during the
8 collaborative law process.

9 NEW SECTION. **Sec. 12.** STANDARDS OF PROFESSIONAL RESPONSIBILITY
10 AND MANDATORY REPORTING NOT AFFECTED. (1) This chapter does not affect
11 the professional responsibility obligations and standards applicable to
12 a lawyer or other licensed professional or relieve a lawyer or other
13 licensed professional from the duty to comply with all applicable
14 professional responsibility obligations and standards.

15 (2) This chapter does not affect the obligation of a person to
16 report abuse or neglect, abandonment, or exploitation of a child or
17 adult under the law of this state.

18 (3) Noncompliance with an obligation or prohibition imposed by this
19 chapter does not in itself establish grounds for professional
20 discipline.

21 NEW SECTION. **Sec. 13.** APPROPRIATENESS OF COLLABORATIVE LAW
22 PROCESS. Before a prospective party signs a collaborative law
23 participation agreement, the prospective party must:

24 (1) Be advised as to whether a collaborative law process is
25 appropriate for the prospective party's matter;

26 (2) Be provided with sufficient information to make an informed
27 decision about the material benefits and risks of a collaborative law
28 process as compared to the material benefits and risks of other
29 reasonably available alternatives for resolving the proposed
30 collaborative matter, such as litigation, mediation, arbitration, or
31 expert evaluation;

32 (3) Be informed that after signing an agreement if a party
33 initiates a proceeding or seeks tribunal intervention in a pending
34 proceeding related to the collaborative matter, the collaborative law
35 process terminates;

1 (4) Be informed that participation in a collaborative law process
2 is voluntary and any party has the right to terminate unilaterally a
3 collaborative law process with or without cause; and

4 (5) Be informed that the collaborative lawyer and any lawyer in a
5 law firm with which the collaborative lawyer is associated may not
6 appear before a tribunal to represent a party in a proceeding related
7 to the collaborative matter, except as authorized by law or court rule.

8 NEW SECTION. **Sec. 14.** COERCIVE OR VIOLENT RELATIONSHIP. (1)

9 Before a prospective party signs a collaborative law participation
10 agreement, a prospective collaborative lawyer shall make reasonable
11 inquiry whether the prospective party has a history of a coercive or
12 violent relationship with another prospective party.

13 (2) Throughout a collaborative law process, a collaborative lawyer
14 reasonably and continuously shall assess whether the party the
15 collaborative lawyer represents has a history of a coercive or violent
16 relationship with another party.

17 (3) If a collaborative lawyer reasonably believes that the party
18 the lawyer represents or the prospective party who consults the lawyer
19 has a history of a coercive or violent relationship with another party
20 or prospective party, the lawyer may not begin or continue a
21 collaborative law process unless:

22 (a) The party or the prospective party requests beginning or
23 continuing a process; and

24 (b) The collaborative lawyer reasonably believes that the safety of
25 the party or prospective party can be protected adequately during a
26 process.

27 NEW SECTION. **Sec. 15.** CONFIDENTIALITY OF COLLABORATIVE LAW
28 COMMUNICATION. Subject to section 12 of this act, a collaborative law
29 communication is confidential to the extent agreed by the parties in a
30 signed record or as provided by law of this state other than this
31 chapter.

32 NEW SECTION. **Sec. 16.** PRIVILEGE AGAINST DISCLOSURE FOR
33 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY. (1) Subject
34 to sections 17 and 18 of this act, a collaborative law communication is

1 privileged under subsection (2) of this section, is not subject to
2 discovery, and is not admissible in evidence.

3 (2) In a proceeding, the following privileges apply:

4 (a) A party may refuse to disclose, and may prevent any other
5 person from disclosing, a collaborative law communication.

6 (b) A nonparty participant may refuse to disclose, and may prevent
7 any other person from disclosing, a collaborative law communication of
8 the nonparty participant.

9 (3) Evidence or information that is otherwise admissible or subject
10 to discovery does not become inadmissible or protected from discovery
11 solely because of its disclosure or use in a collaborative law process.

12 NEW SECTION. **Sec. 17.** WAIVER AND PRECLUSION OF PRIVILEGE. (1) A
13 privilege under section 16 of this act may be waived in a record or
14 orally during a proceeding if it is expressly waived by all parties
15 and, in the case of the privilege of a nonparty participant, it is also
16 expressly waived by the nonparty participant.

17 (2) A person that makes a disclosure or representation about a
18 collaborative law communication which prejudices another person in a
19 proceeding may not assert a privilege under section 16 of this act, but
20 this preclusion applies only to the extent necessary for the person
21 prejudiced to respond to the disclosure or representation.

22 NEW SECTION. **Sec. 18.** LIMITS OF PRIVILEGE. (1) There is no
23 privilege under section 16 of this act for a collaborative law
24 communication that is:

25 (a) Available to the public under chapter 42.56 RCW or made during
26 a session of a collaborative law process that is open, or is required
27 by law to be open, to the public;

28 (b) A threat or statement of a plan to inflict bodily injury or
29 commit a crime of violence;

30 (c) Intentionally used to plan a crime, commit or attempt to commit
31 a crime, or conceal an ongoing crime or ongoing criminal activity; or

32 (d) In an agreement resulting from the collaborative law process,
33 evidenced by a record signed by all parties to the agreement.

34 (2) The privileges under section 16 of this act for a collaborative
35 law communication do not apply to the extent that a communication is:

1 (a) Sought or offered to prove or disprove a claim or complaint of
2 professional misconduct or malpractice arising from or related to a
3 collaborative law process;

4 (b) Sought or offered to prove or disprove abuse, neglect,
5 abandonment, or exploitation of a child or adult, unless the child
6 protective services agency or adult protective services agency is a
7 party to or otherwise participates in the process; or

8 (c) Sought or offered to prove or disprove stalking or cyber
9 stalking of a party or child.

10 (3) There is no privilege under section 16 of this act if a
11 tribunal finds, after a hearing in camera, that the party seeking
12 discovery or the proponent of the evidence has shown the evidence is
13 not otherwise available, the need for the evidence substantially
14 outweighs the interest in protecting confidentiality, and the
15 collaborative law communication is sought or offered in:

16 (a) A court proceeding involving a felony or misdemeanor; or

17 (b) A proceeding seeking rescission or reformation of a contract
18 arising out of the collaborative law process or in which a defense to
19 avoid liability on the contract is asserted.

20 (4) If a collaborative law communication is subject to an exception
21 under subsection (2) or (3) of this section, only the part of the
22 communication necessary for the application of the exception may be
23 disclosed or admitted.

24 (5) Disclosure or admission of evidence excepted from the privilege
25 under subsection (2) or (3) of this section does not make the evidence
26 or any other collaborative law communication discoverable or admissible
27 for any other purpose.

28 (6) The privileges under section 16 of this act do not apply if the
29 parties agree in advance in a signed record, or if a record of a
30 proceeding reflects agreement by the parties, that all or part of a
31 collaborative law process is not privileged. This subsection does not
32 apply to a collaborative law communication made by a person that did
33 not receive actual notice of the agreement before the communication was
34 made.

35 NEW SECTION. **Sec. 19.** AUTHORITY OF TRIBUNAL IN CASE OF
36 NONCOMPLIANCE. (1) If an agreement fails to meet the requirements of
37 section 4 of this act, or a lawyer fails to comply with section 13 or

1 14 of this act, a tribunal may nonetheless find that the parties
2 intended to enter into a collaborative law participation agreement if
3 they:

4 (a) Signed a record indicating an intention to enter into a
5 collaborative law participation agreement; and

6 (b) Reasonably believed they were participating in a collaborative
7 law process.

8 (2) If a tribunal makes the findings specified in subsection (1) of
9 this section, and the interests of justice require, the tribunal may:

10 (a) Enforce an agreement evidenced by a record resulting from the
11 process in which the parties participated;

12 (b) Apply the disqualification provisions of sections 5, 6, 9, and
13 10 of this act; and

14 (c) Apply a privilege under section 16 of this act.

15 NEW SECTION. **Sec. 20.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.

16 In applying and construing this uniform act, consideration must be
17 given to the need to promote uniformity of the law with respect to its
18 subject matter among states that enact it.

19 NEW SECTION. **Sec. 21.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
20 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
21 supersedes the federal electronic signatures in global and national
22 commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit,
23 or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or
24 authorize electronic delivery of any of the notices described in
25 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

26 NEW SECTION. **Sec. 22.** SEVERABILITY. If any provision of this act
27 or its application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 23.** Sections 1 through 22 of this act
31 constitute a new chapter in Title 7 RCW."

ADOPTED 04/15/2013

1 On page 1, line 1 of the title, after "law;" strike the remainder
2 of the title and insert "and adding a new chapter to Title 7 RCW."

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