

SHB 2196 - S COMM AMD  
By Committee on Judiciary

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:

17 (a) A judicial, administrative, arbitral, or other adjudicative  
18 process before a tribunal, including related prehearing and posthearing  
19 motions, conferences, and discovery; or

20 (b) a legislative hearing or similar process.

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

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

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

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

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

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

35 (15) "Tribunal" means:

36 (a) A court, arbitrator, administrative agency, or other body  
37 acting in an adjudicative capacity which, after presentation of

1 evidence or legal argument, has jurisdiction to render a decision  
2 affecting a party's interests in a matter; or

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

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

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

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

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

22 (2) Parties may agree to include in a collaborative law  
23 participation agreement additional provisions not inconsistent with  
24 this chapter.

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

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

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

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

1 (c) Termination of the process.

2 (4) A collaborative law process terminates:

3 (a) When a party gives notice to other parties in a record that the

4 process is ended; or

5 (b) When a party:

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

7 the agreement of all parties; or

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

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

10 for a conference with the tribunal;

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

12 calendar; or

13 (C) Takes similar action requiring notice to be sent to the

14 parties; or

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

16 when a party discharges a collaborative lawyer or a collaborative

17 lawyer withdraws from further representation of a party.

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

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

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

21 without cause.

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

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

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

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

26 sent to the parties:

27 (a) The unrepresented party engages a successor collaborative

28 lawyer; and

29 (b) In a signed record:

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

31 collaborative law participation agreement;

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

33 collaborative lawyer; and

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

35 representation of a party in the collaborative law process.

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

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

1 resolution of the collaborative matter or any part thereof as evidenced  
2 by a signed record.

3 (9) A collaborative law participation agreement may provide  
4 additional methods of concluding a collaborative law process.

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

13 NEW SECTION. **Sec. 7.** STANDARDS OF PROFESSIONAL RESPONSIBILITY AND  
14 MANDATORY REPORTING NOT AFFECTED. (1) This chapter does not affect the  
15 professional responsibility obligations and standards applicable to a  
16 lawyer or other licensed professional or relieve a lawyer or other  
17 licensed professional from the duty to comply with all applicable  
18 professional responsibility obligations and standards.

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

22 (3) Noncompliance with an obligation or prohibition imposed by this  
23 chapter does not in itself establish grounds for professional  
24 discipline.

25 NEW SECTION. **Sec. 8.** APPROPRIATENESS OF COLLABORATIVE LAW  
26 PROCESS. Before a prospective party signs a collaborative law  
27 participation agreement, the prospective party must:

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

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

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

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

8 (5) Be informed that the collaborative lawyer and any lawyer in a  
9 law firm with which the collaborative lawyer is associated may not  
10 appear before a tribunal to represent a party in a proceeding related  
11 to the collaborative matter, unless otherwise authorized by law or  
12 court rule.

13 NEW SECTION. **Sec. 9.** COERCIVE OR VIOLENT RELATIONSHIP. If there  
14 is a history of a coercive or violent relationship between the parties  
15 or prospective parties, a collaborative law process may not begin or  
16 continue unless the parties request to begin or continue the  
17 collaborative law process and the safety of the party or prospective  
18 party can be protected adequately during a process.

19 NEW SECTION. **Sec. 10.** CONFIDENTIALITY OF COLLABORATIVE LAW  
20 COMMUNICATION. Subject to section 7 of this act, a collaborative law  
21 communication is confidential to the extent agreed by the parties in a  
22 signed record or as provided by law of this state other than this  
23 chapter.

24 NEW SECTION. **Sec. 11.** PRIVILEGE AGAINST DISCLOSURE FOR  
25 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY. (1) Subject  
26 to sections 12 and 13 of this act, a collaborative law communication is  
27 privileged under subsection (2) of this section, is not subject to  
28 discovery, and is not admissible in evidence.

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

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

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

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

4 NEW SECTION. **Sec. 12.** WAIVER AND PRECLUSION OF PRIVILEGE. (1) A  
5 privilege under section 11 of this act may be waived in a record or  
6 orally during a proceeding if it is expressly waived by all parties  
7 and, in the case of the privilege of a nonparty participant, it is also  
8 expressly waived by the nonparty participant.

9 (2) A person that makes a disclosure or representation about a  
10 collaborative law communication which prejudices another person in a  
11 proceeding may not assert a privilege under section 11 of this act, but  
12 this preclusion applies only to the extent necessary for the person  
13 prejudiced to respond to the disclosure or representation.

14 NEW SECTION. **Sec. 13.** LIMITS OF PRIVILEGE. (1) There is no  
15 privilege under section 11 of this act for a collaborative law  
16 communication that is:

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

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

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

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

26 (2) The privileges under section 11 of this act for a collaborative  
27 law communication do not apply to the extent that a communication is:

28 (a) Sought or offered to prove or disprove a claim or complaint of  
29 professional misconduct or malpractice arising from or related to a  
30 collaborative law process;

31 (b) Sought or offered to prove or disprove abuse, neglect,  
32 abandonment, or exploitation of a child or adult, unless the child  
33 protective services agency or adult protective services agency is a  
34 party to or otherwise participates in the process; or

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

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

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

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

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

15 (5) Disclosure or admission of evidence excepted from the privilege  
16 under subsection (2) or (3) of this section does not make the evidence  
17 or any other collaborative law communication discoverable or admissible  
18 for any other purpose.

19 (6) The privileges under section 11 of this act do not apply if the  
20 parties agree in advance in a signed record, or if a record of a  
21 proceeding reflects agreement by the parties, that all or part of a  
22 collaborative law process is not privileged. This subsection does not  
23 apply to a collaborative law communication made by a person that did  
24 not receive actual notice of the agreement before the communication was  
25 made.

26 NEW SECTION. **Sec. 14.** AUTHORITY OF TRIBUNAL IN CASE OF  
27 NONCOMPLIANCE. (1) If an agreement fails to meet the requirements of  
28 section 4 of this act, or a lawyer fails to comply with section 8 or 9  
29 of this act, a tribunal may nonetheless find that the parties intended  
30 to enter into a collaborative law participation agreement if they:

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

33 (b) Reasonably believed they were participating in a collaborative  
34 law process.

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



- 1 (a) Enforce an agreement evidenced by a record resulting from the
- 2 process in which the parties participated;
- 3 (b) Apply the disqualification provisions of section 5 of this act;
- 4 and
- 5 (c) Apply a privilege under section 11 of this act.

6 NEW SECTION. **Sec. 15.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
7 In applying and construing this uniform act, consideration must be  
8 given to the need to promote uniformity of the law with respect to its  
9 subject matter among states that enact it.

10 NEW SECTION. **Sec. 16.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
11 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
12 supersedes the federal electronic signatures in global and national  
13 commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit,  
14 or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or  
15 authorize electronic delivery of any of the notices described in  
16 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

17 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this act  
18 or its application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act  
22 constitute a new chapter in Title 7 RCW."

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

EFFECT: Removes provisions regarding: (1) The stay of

proceedings in a tribunal if parties enter a collaborative law process; (2) a tribunal's authority to issue emergency orders and approve agreements resulting from collaborative law; (3) the disqualification of collaborative lawyers; (4) the collaborative lawyer's duty to advise a prospective party of certain matters and assess whether there is a history of a coercive or violent relationship between the prospective parties (instead provides that the party must be advised of certain matters to make an informed decision and if there is a history of a coercive or violent relationship, the process may not begin or continue unless the parties request it and the safety of the party can be adequately protected). Specifies that the act does not relieve a lawyer or other professional from the duty to comply with all applicable professional responsibility obligations and standards and noncompliance with the act does not in itself establish grounds for professional discipline.

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