

SENATE BILL REPORT

SHB 2196

As Reported by Senate Committee On:
Judiciary, February 24, 2012

Title: An act relating to collaborative law.

Brief Description: Adopting the uniform collaborative law act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Eddy, Rodne, Pedersen, Nealey, Goodman, Jinkins, Kelley and Upthegrove; by request of Uniform Laws Commission).

Brief History: Passed House: 1/23/12, 95-0.

Committee Activity: Judiciary: 2/17/12, 2/24/12 [DPA, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Kohl-Welles and Regala.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden.

Staff: Katherine Taylor (786-7434)

Background: There are various alternative dispute resolution processes, such as mediation and collaborative law, allowing parties to resolve all or part of a dispute outside of court. Collaborative law is currently more commonly used in family law cases, but may be used to reach a settlement in a variety of disputes. In collaborative law, the parties voluntarily participate and sign a collaborative participation agreement describing the scope of the matter to be resolved. One significant difference between collaborative law and mediation is that parties in collaborative law must be represented by attorneys throughout the process.

There are no statewide court rules regulating collaborative law. Some local court rules require the parties in a family law action to notify the court if they enter into a collaborative law participation agreement. In addition, there are rules adopted by the Washington Supreme Court regulating the conduct of lawyers and specifying a lawyer's responsibilities to the client.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Uniform Collaborative Law Rules and Act of 2010 was drafted by the Uniform Law Commission. To date, three states have adopted the act, including Nevada, Utah, and Texas.

Summary of Bill (Recommended Amendments): The Uniform Collaborative Law Act (UCLA) is adopted and applies to collaborative law participation agreements signed on or after the effective date of the legislation. It applies only to civil matters, not criminal cases.

Collaborative Participation Agreement. A collaborative participation agreement (agreement) must describe the nature of the matter intended to be resolved, identify the collaborative lawyers representing the parties, and contain a statement by each lawyer confirming the lawyer's representation of a party in the process.

Concluding a Collaborative Law Process. A collaborative law process is concluded by either a resolution of all or part of the collaborative matter or by termination of the process.

Confidentiality and Privileges of Collaborative Law Communications. Provisions for confidentiality and privilege are created for parties and nonparties in the collaborative law process. A collaborative law communication is confidential to the extent agreed to by the parties, required by other state law, and standards of professional responsibility. With certain exceptions, a collaborative law communication is privileged, is not subject to discovery, and is not admissible in evidence.

Standards of Professional Responsibility. UCLA does not affect the professional responsibility obligations and standards that apply to a lawyer or other licensed professional or relieve a lawyer or other licensed professional from the duty to comply with all applicable professional responsibility obligations and standards. UCLA does not affect the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult. Noncompliance with an obligation or prohibition imposed does not in itself establish grounds for professional discipline.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): Removes provisions regarding the following: proceedings pending before tribunal, emergency orders, approval of agreement by tribunal, disqualification of collaborative lawyer and lawyers in associated law firm, low income parties, and governmental entity as party. Modifies provisions regarding the following: standards of professional responsibility, appropriateness of collaborative law process, coercive or violent relationship, confidentiality of collaborative law communication, and authority of tribunal in case of noncompliance.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony as Heard in Committee: PRO: The Legislature needs to set out the rules for this. The whole act should be in one place. This act applies to more professionals than lawyers. It is questionable whether there is a separation of powers issue. Collaborative law is similar to mediation and not litigation. A whole team is used in collaborative law. Non-party professionals are treated as party equals. There is a history in the Legislature of taking high level procedure steps such as statutes on civil procedure, criminal procedure, or evidence. Parties may define the scope of disclosure of evidence together. Communication can be kept confidential or privileged. This is an out of court process. There is very little interaction with the court. This has value. It avoids litigation. Public records litigation is contentious. Collaborative law helps cut costs for agencies. This helps when parties are not in the same state.

OTHER: Certain parts of the bill should be taken out that deal with court procedure. Rules should be drafted by the Washington State Bar Association (WSBA). There is a separation of powers issue, which maybe why more states haven't adopted this. Certain parts of the bill should be amended that govern how lawyers should practice. Non-party participants are only mentioned in section 17 and 18 of the bill.

Persons Testifying: PRO: Representative Pedersen; Michael Fancher, Collaborative Professionals of WA; J. Mark Weiss, Mary Sakaguchi, King County Collaborative Law; Greg Overstreet, Open Government Mediations.

OTHER: Kathryn Leathers, WSBA.