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By Representatives Eddy, Rodne, Pedersen, Nealey, Goodman, Jinkins, Kelley, and Upthegrove; by request of Uniform Laws Commission

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1 AN ACT Relating to collaborative law; and adding a new chapter to
2 Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

1 (b) Are represented by collaborative lawyers.

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

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

8 (6) "Law firm" means:

9 (a) Lawyers who practice law together in a partnership,
10 professional corporation, sole proprietorship, limited liability
11 company, or association; and

12 (b) Lawyers employed in a legal services organization, or the legal
13 department of a corporation or other organization, or the legal
14 department of a government or governmental subdivision, agency, or
15 instrumentality.

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

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

22 (9) "Person" means an individual, corporation, business trust,
23 estate, trust, partnership, limited liability company, association,
24 joint venture, public corporation, government or governmental
25 subdivision, agency, or instrumentality, or any other legal or
26 commercial entity.

27 (10) "Proceeding" means:

28 (a) A judicial, administrative, arbitral, or other adjudicative
29 process before a tribunal, including related prehearing and posthearing
30 motions, conferences, and discovery; or

31 (b) a legislative hearing or similar process.

32 (11) "Prospective party" means a person that discusses with a
33 prospective collaborative lawyer the possibility of signing a
34 collaborative law participation agreement.

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

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

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

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

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

9 (15) "Tribunal" means:

10 (a) A court, arbitrator, administrative agency, or other body
11 acting in an adjudicative capacity which, after presentation of
12 evidence or legal argument, has jurisdiction to render a decision
13 affecting a party's interests in a matter; or

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

15 NEW SECTION. **Sec. 3.** APPLICABILITY. This chapter applies to a
16 collaborative law participation agreement that meets the requirements
17 of section 4 of this act signed on or after the effective date of this
18 section.

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

21 (a) Be in a record;

22 (b) Be signed by the parties;

23 (c) State the parties' intention to resolve a collaborative matter
24 through a collaborative law process under this chapter;

25 (d) Describe the nature and scope of the matter;

26 (e) Identify the collaborative lawyer who represents each party in
27 the process; and

28 (f) Contain a statement by each collaborative lawyer confirming the
29 lawyer's representation of a party in the collaborative law process.

30 (2) Parties may agree to include in a collaborative law
31 participation agreement additional provisions not inconsistent with
32 this chapter.

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

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

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

4 (a) Resolution of a collaborative matter as evidenced by a signed
5 record;

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

9 (c) Termination of the process.

10 (4) A collaborative law process terminates:

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

13 (b) When a party:

14 (i) Begins a proceeding related to a collaborative matter without
15 the agreement of all parties; or

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

17 (A) Initiates a pleading, motion, order to show cause, or request
18 for a conference with the tribunal;

19 (B) Requests that the proceeding be put on the tribunal's active
20 calendar; or

21 (C) Takes similar action requiring notice to be sent to the
22 parties; or

23 (c) Except as otherwise provided by subsection (7) of this section,
24 when a party discharges a collaborative lawyer or a collaborative
25 lawyer withdraws from further representation of a party.

26 (5) A party's collaborative lawyer shall give prompt notice to all
27 other parties in a record of a discharge or withdrawal.

28 (6) A party may terminate a collaborative law process with or
29 without cause.

30 (7) Notwithstanding the discharge or withdrawal of a collaborative
31 lawyer, a collaborative law process continues, if not later than thirty
32 days after the date that the notice of the discharge or withdrawal of
33 a collaborative lawyer required by subsection (5) of this section is
34 sent to the parties:

35 (a) The unrepresented party engages a successor collaborative
36 lawyer; and

37 (b) In a signed record:

1 (i) The parties consent to continue the process by reaffirming the
2 collaborative law participation agreement;

3 (ii) The agreement is amended to identify the successor
4 collaborative lawyer; and

5 (iii) The successor collaborative lawyer confirms the lawyer's
6 representation of a party in the collaborative law process.

7 (8) A collaborative law process does not conclude if, with the
8 consent of the parties, a party requests a tribunal to approve a
9 resolution of the collaborative matter or any part thereof as evidenced
10 by a signed record.

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

13 NEW SECTION. **Sec. 6.** PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS
14 REPORT. (1) Persons in a proceeding pending before a tribunal may sign
15 a collaborative law participation agreement to seek to resolve a
16 collaborative matter related to the proceeding. Parties shall file
17 promptly with the tribunal a notice of the agreement after it is
18 signed. Subject to subsection (3) of this section and sections 7 and
19 8 of this act, the filing operates as an application for a stay of the
20 proceeding.

21 (2) The parties shall file promptly with the tribunal notice in a
22 record when a collaborative law process concludes. The stay of the
23 proceeding under subsection (1) of this section is lifted when the
24 notice is filed. The notice may not specify any reason for termination
25 of the process.

26 (3) A tribunal in which a proceeding is stayed under subsection (1)
27 of this section may require the parties and collaborative lawyers to
28 provide a status report on the collaborative law process and the
29 proceeding. A status report may include only information on whether
30 the process is ongoing or concluded. It may not include a report,
31 assessment, evaluation, recommendation, finding, or other communication
32 regarding a collaborative law process or collaborative matter.

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

35 (5) A tribunal shall provide parties notice and an opportunity to
36 be heard before dismissing a proceeding in which a notice of

1 collaborative law process is filed based on delay or failure to
2 prosecute.

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

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

10 NEW SECTION. **Sec. 9.** DISQUALIFICATION OF COLLABORATIVE LAWYER AND
11 LAWYERS IN ASSOCIATED LAW FIRM. (1) Except as otherwise provided in
12 subsection (3) of this section, a collaborative lawyer is disqualified
13 from appearing before a tribunal to represent a party in a proceeding
14 related to the collaborative matter.

15 (2) Except as otherwise provided in subsection (3) of this section
16 and sections 10 and 11 of this act, a lawyer in a law firm with which
17 the collaborative lawyer is associated is disqualified from appearing
18 before a tribunal to represent a party in a proceeding related to the
19 collaborative matter if the collaborative lawyer is disqualified from
20 doing so under subsection (1) of this section.

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

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

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

29 (4) If subsection (3)(b) applies, a collaborative lawyer, or lawyer
30 in a law firm with which the collaborative lawyer is associated, may
31 represent a party or family or household member only until the person
32 is represented by a successor lawyer or reasonable measures are taken
33 to protect the health, safety, welfare, or interest of the person.

1 NEW SECTION. **Sec. 10.** LOW-INCOME PARTIES. (1) The
2 disqualification of section 9(1) of this act applies to a collaborative
3 lawyer representing a party with or without fee.

4 (2) After a collaborative law process concludes, another lawyer in
5 a law firm with which a collaborative lawyer disqualified under section
6 9(1) of this act is associated may represent a party without fee in the
7 collaborative matter or a matter related to the collaborative matter
8 if:

9 (a) The party has an annual income that qualifies the party for
10 free legal representation under the criteria established by the law
11 firm for free legal representation;

12 (b) The collaborative law participation agreement so provides; and

13 (c) The collaborative lawyer is isolated from any participation in
14 the collaborative matter or a matter related to the collaborative
15 matter through procedures within the law firm which are reasonably
16 calculated to isolate the collaborative lawyer from such participation.

17 NEW SECTION. **Sec. 11.** GOVERNMENTAL ENTITY AS PARTY. (1) The
18 disqualification of section 9(1) of this act applies to a collaborative
19 lawyer representing a party that is a government or governmental
20 subdivision, agency, or instrumentality.

21 (2) After a collaborative law process concludes, another lawyer in
22 a law firm with which the collaborative lawyer is associated may
23 represent a government or governmental subdivision, agency, or
24 instrumentality in the collaborative matter or a matter related to the
25 collaborative matter if:

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

27 (b) The collaborative lawyer is isolated from any participation in
28 the collaborative matter or a matter related to the collaborative
29 matter through procedures within the law firm which are reasonably
30 calculated to isolate the collaborative lawyer from such participation.

31 NEW SECTION. **Sec. 12.** DISCLOSURE OF INFORMATION. Except as
32 provided by law other than this chapter, during the collaborative law
33 process, on the request of another party, a party shall make timely,
34 full, candid, and informal disclosure of information related to the
35 collaborative matter without formal discovery. A party also shall

1 update promptly previously disclosed information that has materially
2 changed. The parties may define the scope of disclosure during the
3 collaborative law process.

4 NEW SECTION. **Sec. 13.** STANDARDS OF PROFESSIONAL RESPONSIBILITY
5 AND MANDATORY REPORTING NOT AFFECTED. This chapter does not affect:

6 (1) The professional responsibility obligations and standards
7 applicable to a lawyer or other licensed professional; or

8 (2) The obligation of a person to report abuse or neglect,
9 abandonment, or exploitation of a child or adult under the law of this
10 state.

11 NEW SECTION. **Sec. 14.** APPROPRIATENESS OF COLLABORATIVE LAW
12 PROCESS. Before a prospective party signs a collaborative law
13 participation agreement, a prospective collaborative lawyer shall:

14 (1) Assess with the prospective party factors the lawyer reasonably
15 believes relate to whether a collaborative law process is appropriate
16 for the prospective party's matter;

17 (2) Provide the prospective party with information that the lawyer
18 reasonably believes is sufficient for the party to make an informed
19 decision about the material benefits and risks of a collaborative law
20 process as compared to the material benefits and risks of other
21 reasonably available alternatives for resolving the proposed
22 collaborative matter, such as litigation, mediation, arbitration, or
23 expert evaluation; and

24 (3) Advise the prospective party that:

25 (a) After signing an agreement if a party initiates a proceeding or
26 seeks tribunal intervention in a pending proceeding related to the
27 collaborative matter, the collaborative law process terminates;

28 (b) Participation in a collaborative law process is voluntary and
29 any party has the right to terminate unilaterally a collaborative law
30 process with or without cause; and

31 (c) The collaborative lawyer and any lawyer in a law firm with
32 which the collaborative lawyer is associated may not appear before a
33 tribunal to represent a party in a proceeding related to the
34 collaborative matter, except as authorized by section 9(3), 10(2), or
35 11(2) of this act.

1 NEW SECTION. **Sec. 15.** COERCIVE OR VIOLENT RELATIONSHIP. (1)

2 Before a prospective party signs a collaborative law participation
3 agreement, a prospective collaborative lawyer shall make reasonable
4 inquiry whether the prospective party has a history of a coercive or
5 violent relationship with another prospective party.

6 (2) Throughout a collaborative law process, a collaborative lawyer
7 reasonably and continuously shall assess whether the party the
8 collaborative lawyer represents has a history of a coercive or violent
9 relationship with another party.

10 (3) If a collaborative lawyer reasonably believes that the party
11 the lawyer represents or the prospective party who consults the lawyer
12 has a history of a coercive or violent relationship with another party
13 or prospective party, the lawyer may not begin or continue a
14 collaborative law process unless:

15 (a) The party or the prospective party requests beginning or
16 continuing a process; and

17 (b) The collaborative lawyer reasonably believes that the safety of
18 the party or prospective party can be protected adequately during a
19 process.

20 NEW SECTION. **Sec. 16.** CONFIDENTIALITY OF COLLABORATIVE LAW

21 COMMUNICATION. A collaborative law communication is confidential to
22 the extent agreed by the parties in a signed record or as provided by
23 law of this state other than this chapter.

24 NEW SECTION. **Sec. 17.** PRIVILEGE AGAINST DISCLOSURE FOR

25 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY. (1) Subject
26 to sections 18 and 19 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.

35 (3) Evidence or information that is otherwise admissible or subject

1 to discovery does not become inadmissible or protected from discovery
2 solely because of its disclosure or use in a collaborative law process.

3 NEW SECTION. **Sec. 18.** WAIVER AND PRECLUSION OF PRIVILEGE. (1) A
4 privilege under section 17 of this act may be waived in a record or
5 orally during a proceeding if it is expressly waived by all parties
6 and, in the case of the privilege of a nonparty participant, it is also
7 expressly waived by the nonparty participant.

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

13 NEW SECTION. **Sec. 19.** LIMITS OF PRIVILEGE. (1) There is no
14 privilege under section 17 of this act for a collaborative law
15 communication that is:

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

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

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

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

25 (2) The privileges under section 17 of this act for a collaborative
26 law communication do not apply to the extent that a communication is:

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

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

34 (3) There is no privilege under section 17 of this act if a
35 tribunal finds, after a hearing in camera, that the party seeking
36 discovery or the proponent of the evidence has shown the evidence is

1 not otherwise available, the need for the evidence substantially
2 outweighs the interest in protecting confidentiality, and the
3 collaborative law communication is sought or offered in:

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

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

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

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

16 (6) The privileges under section 17 of this act do not apply if the
17 parties agree in advance in a signed record, or if a record of a
18 proceeding reflects agreement by the parties, that all or part of a
19 collaborative law process is not privileged. This subsection does not
20 apply to a collaborative law communication made by a person that did
21 not receive actual notice of the agreement before the communication was
22 made.

23 NEW SECTION. **Sec. 20.** AUTHORITY OF TRIBUNAL IN CASE OF
24 NONCOMPLIANCE. (1) If an agreement fails to meet the requirements of
25 section 4 of this act, or a lawyer fails to comply with Section 14 or
26 15 of this act, a tribunal may nonetheless find that the parties
27 intended to enter into a collaborative law participation agreement if
28 they:

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

31 (b) Reasonably believed they were participating in a collaborative
32 law process.

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

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

1 (b) Apply the disqualification provisions of sections 5, 6, 9, 10,
2 and 11 of this act; and

3 (c) Apply a privilege under section 17 of this act.

4 NEW SECTION. **Sec. 21.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
5 In applying and construing this uniform act, consideration must be
6 given to the need to promote uniformity of the law with respect to its
7 subject matter among states that enact it.

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

15 NEW SECTION. **Sec. 23.** SEVERABILITY. If any provision of this act
16 or its application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act
20 constitute a new chapter in Title 7 RCW.

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