
Judiciary Committee

HB 1116

Title: An act relating to collaborative law.

Brief Description: Adopting the uniform collaborative law act.

Sponsors: Representatives Pedersen, Hansen, Rodne and Nealey; by request of Uniform Laws Commission.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Adopts the Uniform Collaborative Law Act.

Hearing Date: 1/22/13

Staff: Cece Clynch (786-7195).

Background:

Collaborative law is a voluntary, contractually based alternative dispute resolution process that allows parties to resolve all or part of a dispute outside of court. It is currently most commonly used in family law cases, but may be used to reach 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 other forms of alternative dispute resolution such as 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 professional responsibilities to a 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 Act (UCLA) of 2010 was drafted by the Uniform Law Commission. To date, the following five states and the District of Columbia have adopted the act: Nevada, Utah, Texas, Ohio, and Hawaii.

Summary of Bill:

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

Collaborative Participation Agreement.

A collaborative participation agreement ("agreement") must, among other things, describe the nature and scope 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. The agreement may contain additional provisions that are not inconsistent with the UCLA, including provisions on how the collaborative law process can be concluded.

Authority of Tribunal during Collaborative Law Process.

Parties in a pending proceeding, such as a court action, arbitration, or administrative action, may enter an agreement to attempt to resolve a matter related to the proceeding. The notice to the tribunal of the agreement acts as an application for a stay of the proceeding. The stay is lifted when the parties file notice that the collaborative law process has concluded. The tribunal may require the parties to provide a status report on whether the collaborative law process is ongoing or concluded. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a family or household member.

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.

A collaborative law process is terminated when: (1) a party notifies other parties that the process is ended; (2) a party begins a proceeding related to a collaborative matter without agreement of all parties or, if there is a pending proceeding, the party initiates an action in the tribunal that would require notice to be sent to the parties; or (3) a party discharges his or her collaborative lawyer or the lawyer withdraws. In the event of the latter occurrence, the process may continue if the unrepresented party engages a new collaborative lawyer and all parties agree to continue.

Responsibilities of Collaborative Lawyers.

Before a party signs a collaborative law participation agreement, the lawyer must: (1) assess with the party factors the lawyer reasonably believes relate to whether the process is appropriate for the matter; (2) provide information the lawyer reasonably believes is sufficient for the party to make an informed decision; and (3) advise the party that the process is voluntary, can be terminated if the party initiates proceedings in a tribunal, and requires disqualification of the lawyer once the process is concluded.

Before a party signs an agreement, and throughout the collaborative law process, the lawyer must make a reasonable inquiry and assessment of whether the party has a history of a coercive or violent relationship with another prospective party. If the lawyer believes the party he or she represents has a history of a coercive or violent relationship with another party, the lawyer may not begin or continue a collaborative laws process unless the party requests the process and the lawyer reasonably believes that the party's safety can be adequately protected during the process.

Disqualification of Collaborative Lawyers.

A collaborative lawyer may not represent a party before a tribunal in a proceeding related to the collaborative matter, except to ask the tribunal to approve an agreement resulting from the collaborative law process or to seek or defend an emergency order. In the case of an emergency order, the collaborative lawyer may represent a party or family or household member only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

This disqualification applies to lawyers in the collaborative lawyer's law firm, except for firms representing governmental entities. In the case of a party that is a governmental entity, another lawyer in the firm may represent the party, but the collaborative lawyer must be isolated from any participation in the matter.

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 or required by other state law.

With certain exceptions, a collaborative law communication is privileged, is not subject to discovery, and is not admissible in evidence. Generally, a party may refuse to disclose and may prevent others from disclosing a collaborative law communication. However, information that is otherwise admissible or discoverable does not become inadmissible or protected from discovery solely because of its use in a collaborative law process.

Exemptions to privilege include communications that would be public under the Public Records Act or that pertain to certain criminal activity. In addition, the privilege does not apply when the communication is sought or offered: (1) in a claim of professional misconduct or malpractice arising from the process; (2) to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the protective services agency is a party to the process; or, (3) to prove or disprove stalking or cyber stalking of a party or child.

There is also no privilege if the tribunal finds that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is sought in a criminal proceeding or a proceeding related to avoiding liability on, rescinding, or reforming a contract arising out of the collaborative law process.

Standards of Professional Responsibility.

The UCLA does not affect the professional responsibility obligations and standards that apply to a lawyer or other licensed professional or to the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult.

Appropriation: None.

Fiscal Note: Requested on January 16, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.