

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1116**

63rd Legislature  
2013 Regular Session

Passed by the House April 18, 2013  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 15, 2013  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1116** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1116**

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AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Pedersen, Hansen, Rodne, and Nealey; by request of Uniform Laws Commission)

READ FIRST TIME 01/31/13.

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 a judicial, administrative, arbitral, or  
28 other adjudicative process before a tribunal, including related  
29 prehearing and posthearing motions, conferences, and discovery.

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

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

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

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

- 3 (a) To execute or adopt a tangible symbol; or
- 4 (b) To attach to or logically associate with the record an  
5 electronic symbol, sound, or process.

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

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

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

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

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

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

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

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

1 (3) A collaborative law process is concluded by a:  
2 (a) Resolution of a collaborative matter as evidenced by a signed  
3 record;  
4 (b) Resolution of a part of the collaborative matter, evidenced by  
5 a signed record, in which the parties agree that the remaining parts of  
6 the matter will not be resolved in the process; or  
7 (c) Termination of the process.  
8 (4) A collaborative law process terminates:  
9 (a) When a party gives notice to other parties in a record that the  
10 process is ended; or  
11 (b) When a party:  
12 (i) Begins a proceeding related to a collaborative matter without  
13 the agreement of all parties; or  
14 (ii) In a pending proceeding related to the matter:  
15 (A) Initiates a pleading, motion, order to show cause, or request  
16 for a conference with the tribunal without the agreement of all parties  
17 as to the relief sought;  
18 (B) Requests that the proceeding be put on the tribunal's active  
19 calendar; or  
20 (C) Takes similar contested action requiring notice to be sent to  
21 the parties; or  
22 (c) Except as otherwise provided by subsection (7) of this section,  
23 when a party discharges a collaborative lawyer or a collaborative  
24 lawyer withdraws from further representation of a party.  
25 (5) A party's collaborative lawyer shall give prompt notice to all  
26 other parties in a record of a discharge or withdrawal.  
27 (6) A party may terminate a collaborative law process with or  
28 without cause.  
29 (7) Notwithstanding the discharge or withdrawal of a collaborative  
30 lawyer, a collaborative law process continues, if not later than thirty  
31 days after the date that the notice of the discharge or withdrawal of  
32 a collaborative lawyer required by subsection (5) of this section is  
33 sent to the parties:  
34 (a) The unrepresented party engages a successor collaborative  
35 lawyer; and  
36 (b) In a signed record:  
37 (i) The parties consent to continue the process by reaffirming the  
38 collaborative law participation agreement;

1 (ii) The agreement is amended to identify the successor  
2 collaborative lawyer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33        NEW SECTION.    **Sec. 10.**    GOVERNMENTAL ENTITY AS PARTY.    (1) The  
34 disqualification of section 9(1) of this act applies to a collaborative

1 lawyer representing a party that is a government or governmental  
2 subdivision, agency, or instrumentality.

3 (2) After a collaborative law process concludes, another lawyer in  
4 a law firm with which the collaborative lawyer is associated may  
5 represent a government or governmental subdivision, agency, or  
6 instrumentality in the collaborative matter or a matter related to the  
7 collaborative matter if:

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

9 (b) The collaborative lawyer is isolated from any participation in  
10 the collaborative matter or a matter related to the collaborative  
11 matter through procedures within the law firm which are reasonably  
12 calculated to isolate the collaborative lawyer from such participation.

13 NEW SECTION. **Sec. 11.** DISCLOSURE OF INFORMATION. Except as  
14 provided by law other than this chapter, during the collaborative law  
15 process, on the request of another party, a party shall make timely,  
16 full, candid, and informal disclosure of information related to the  
17 collaborative matter without formal discovery. A party also shall  
18 update promptly previously disclosed information that has materially  
19 changed. The parties may define the scope of disclosure during the  
20 collaborative law process.

21 NEW SECTION. **Sec. 12.** STANDARDS OF PROFESSIONAL RESPONSIBILITY  
22 AND MANDATORY REPORTING NOT AFFECTED. (1) This chapter does not affect  
23 the professional responsibility obligations and standards applicable to  
24 a lawyer or other licensed professional or relieve a lawyer or other  
25 licensed professional from the duty to comply with all applicable  
26 professional responsibility obligations and standards.

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

30 (3) Noncompliance with an obligation or prohibition imposed by this  
31 chapter does not in itself establish grounds for professional  
32 discipline.

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

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

3 (2) Be provided with sufficient information to make an informed  
4 decision about the material benefits and risks of a collaborative law  
5 process as compared to the material benefits and risks of other  
6 reasonably available alternatives for resolving the proposed  
7 collaborative matter, such as litigation, mediation, arbitration, or  
8 expert evaluation;

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

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

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

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

21 Before a prospective party signs a collaborative law participation  
22 agreement, a prospective collaborative lawyer shall make reasonable  
23 inquiry whether the prospective party has a history of a coercive or  
24 violent relationship with another prospective party.

25 (2) Throughout a collaborative law process, a collaborative lawyer  
26 reasonably and continuously shall assess whether the party the  
27 collaborative lawyer represents has a history of a coercive or violent  
28 relationship with another party.

29 (3) If a collaborative lawyer reasonably believes that the party  
30 the lawyer represents or the prospective party who consults the lawyer  
31 has a history of a coercive or violent relationship with another party  
32 or prospective party, the lawyer may not begin or continue a  
33 collaborative law process unless:

34 (a) The party or the prospective party requests beginning or  
35 continuing a process; and

36 (b) The collaborative lawyer reasonably believes that the safety of

1 the party or prospective party can be protected adequately during a  
2 process.

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

8 NEW SECTION. **Sec. 16.** PRIVILEGE AGAINST DISCLOSURE FOR  
9 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY. (1) Subject  
10 to sections 17 and 18 of this act, a collaborative law communication is  
11 privileged under subsection (2) of this section, is not subject to  
12 discovery, and is not admissible in evidence.

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) Sought or offered to prove or disprove a claim or complaint of  
13 professional misconduct or malpractice arising from or related to a  
14 collaborative law process;

15 (b) Sought or offered to prove or disprove abuse, neglect,  
16 abandonment, or exploitation of a child or adult, unless the child  
17 protective services agency or adult protective services agency is a  
18 party to or otherwise participates in the process; or

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

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

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

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

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

35 (5) Disclosure or admission of evidence excepted from the privilege  
36 under subsection (2) or (3) of this section does not make the evidence  
37 or any other collaborative law communication discoverable or admissible  
38 for any other purpose.

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

8 NEW SECTION. **Sec. 19.** AUTHORITY OF TRIBUNAL IN CASE OF  
9 NONCOMPLIANCE. (1) If an agreement fails to meet the requirements of  
10 section 4 of this act, or a lawyer fails to comply with section 13 or  
11 14 of this act, a tribunal may nonetheless find that the parties  
12 intended to enter into a collaborative law participation agreement if  
13 they:

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

16 (b) Reasonably believed they were participating in a collaborative  
17 law process.

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

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

22 (b) Apply the disqualification provisions of sections 5, 6, 9, and  
23 10 of this act; and

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

25 NEW SECTION. **Sec. 20.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
26 In applying and construing this uniform act, consideration must be  
27 given to the need to promote uniformity of the law with respect to its  
28 subject matter among states that enact it.

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

1        NEW SECTION.    **Sec. 22.**    SEVERABILITY.    If any provision of this act  
2    or its application to any person or circumstance is held invalid, the  
3    remainder of the act or the application of the provision to other  
4    persons or circumstances is not affected.

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

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