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**SUBSTITUTE HOUSE BILL 1116**

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**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:

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. (1) This chapter applies to  
16 a 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 (2) The use of collaborative law applies only to matters that would  
20 be resolved in civil court and may not be used to resolve matters in  
21 criminal cases.

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

24 (a) Be in a record;

25 (b) Be signed by the parties;

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

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

29 (e) Identify the collaborative lawyer who represents each party in  
30 the process; and

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

33 (2) Parties may agree to include in a collaborative law  
34 participation agreement additional provisions not inconsistent with  
35 this chapter.

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

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

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

7           (a) Resolution of a collaborative matter as evidenced by a signed  
8   record;

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

12          (c) Termination of the process.

13          (4) A collaborative law process terminates:

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

16          (b) When a party:

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

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

20           (A) Initiates a pleading, motion, order to show cause, or request  
21   for a conference with the tribunal without the agreement of all parties  
22   as to the relief sought;

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

25           (C) Takes similar contested action requiring notice to be sent to  
26   the parties; or

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

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

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

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

1 (a) The unrepresented party engages a successor collaborative  
2 lawyer; and

3 (b) In a signed record:

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

6 (ii) The agreement is amended to identify the successor  
7 collaborative lawyer; and

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

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

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

16 NEW SECTION. **Sec. 6.** PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS  
17 REPORT. (1) Persons in a proceeding pending before a tribunal may sign  
18 a collaborative law participation agreement to seek to resolve a  
19 collaborative matter related to the proceeding. Parties shall file  
20 promptly with the tribunal a notice of the agreement after it is  
21 signed. Subject to subsection (3) of this section and sections 7 and  
22 8 of this act, the filing operates as an application for a stay of the  
23 proceeding.

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

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

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

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

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

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

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

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

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

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

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

31 (4) If subsection (3)(b) of this section applies, a collaborative  
32 lawyer, or lawyer in a law firm with which the collaborative lawyer is  
33 associated, may represent a party or family or household member only  
34 until the person is represented by a successor lawyer or reasonable

1 measures are taken to protect the health, safety, welfare, or interest  
2 of the person.

3 NEW SECTION. **Sec. 10.** GOVERNMENTAL ENTITY AS PARTY. (1) The  
4 disqualification of section 9(1) of this act applies to a collaborative  
5 lawyer representing a party that is a government or governmental  
6 subdivision, agency, or instrumentality.

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

- 12 (a) The collaborative law participation agreement so provides; and  
13 (b) 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.** DISCLOSURE OF INFORMATION. Except as  
18 provided by law other than this chapter, during the collaborative law  
19 process, on the request of another party, a party shall make timely,  
20 full, candid, and informal disclosure of information related to the  
21 collaborative matter without formal discovery. A party also shall  
22 update promptly previously disclosed information that has materially  
23 changed. The parties may define the scope of disclosure during the  
24 collaborative law process.

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

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

34 (3) Noncompliance with an obligation or prohibition imposed by this

1 chapter does not in itself establish grounds for professional  
2 discipline.

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

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

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

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

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

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

25 NEW SECTION. **Sec. 14.** COERCIVE OR VIOLENT RELATIONSHIP. (1)  
26 Before a prospective party signs a collaborative law participation  
27 agreement, a prospective collaborative lawyer shall make reasonable  
28 inquiry whether the prospective party has a history of a coercive or  
29 violent relationship with another prospective party.

30 (2) Throughout a collaborative law process, a collaborative lawyer  
31 reasonably and continuously shall assess whether the party the  
32 collaborative lawyer represents has a history of a coercive or violent  
33 relationship with another party.

34 (3) If a collaborative lawyer reasonably believes that the party  
35 the lawyer represents or the prospective party who consults the lawyer



1 has a history of a coercive or violent relationship with another party  
2 or prospective party, the lawyer may not begin or continue a  
3 collaborative law process unless:

4 (a) The party or the prospective party requests beginning or  
5 continuing a process; and

6 (b) The collaborative lawyer reasonably believes that the safety of  
7 the party or prospective party can be protected adequately during a  
8 process.

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

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

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

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

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

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

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

33 (2) A person that makes a disclosure or representation about a  
34 collaborative law communication which prejudices another person in a

1 proceeding may not assert a privilege under section 16 of this act, but  
2 this preclusion applies only to the extent necessary for the person  
3 prejudiced to respond to the disclosure or representation.

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

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

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

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

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

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

18 (a) Sought or offered to prove or disprove a claim or complaint of  
19 professional misconduct or malpractice arising from or related to a  
20 collaborative law process;

21 (b) Sought or offered to prove or disprove abuse, neglect,  
22 abandonment, or exploitation of a child or adult, unless the child  
23 protective services agency or adult protective services agency is a  
24 party to or otherwise participates in the process; or

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

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

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

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

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

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

9 (6) The privileges under section 16 of this act do not apply if the  
10 parties agree in advance in a signed record, or if a record of a  
11 proceeding reflects agreement by the parties, that all or part of a  
12 collaborative law process is not privileged. This subsection does not  
13 apply to a collaborative law communication made by a person that did  
14 not receive actual notice of the agreement before the communication was  
15 made.

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

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

24 (b) Reasonably believed they were participating in a collaborative  
25 law process.

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

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

30 (b) Apply the disqualification provisions of sections 5, 6, 9, and  
31 10 of this act; and

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

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

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

8        NEW SECTION.    **Sec. 22.**    SEVERABILITY.    If any provision of this act  
9    or its application to any person or circumstance is held invalid, the  
10   remainder of the act or the application of the provision to other  
11   persons or circumstances is not affected.

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

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