

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1116

Chapter 119, Laws of 2013

63rd Legislature
2013 Regular Session

COLLABORATIVE LAW

EFFECTIVE DATE: 07/28/13

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved May 3, 2013, 11:07 a.m.

JAY INSLEE

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.

BARBARA BAKER

Chief Clerk

FILED

May 3, 2013

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1116

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.

Passed by the House April 18, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 3, 2013.

Filed in Office of Secretary of State May 3, 2013.