

1 By: _____ Bill No. _____

2 A BILL TO BE ENTITLED

3 AN ACT

4 relating to the adoption of the Uniform Collaborative Law Act.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Civil Practices and Remedies Code, is amended by adding a new Chapter 161, entitled
7 “Uniform Collaborative Law Act”, to read as follows:

8 CHAPTER 161. UNIFORM COLLABORATIVE LAW ACT

9 SUBCHAPTER A. APPLICATION AND CONSTRUCTION

10 Sec. 161.0001. **POLICY.** It is the policy of this state to encourage the peaceable resolution of disputes,
11 with special consideration given to disputes involving the parent-child relationship, including the
12 resolution of issues involving conservatorship, possession, and support of children, and the early
13 settlement of pending litigation through voluntary settlement procedures.

14 Sec. 161.0002. **CONFLICTS BETWEEN PROVISIONS.** If a provision of this chapter
15 conflicts with a provision of this title or another statute or rule of this state and the conflict
16 cannot be reconciled, this chapter prevails.

17 SUBCHAPTER B. GENERAL PROVISIONS

18 Sec. 161.001. **SHORT TITLE.** This Chapter may be cited as the Uniform Collaborative Law Act.

19
20 Sec. 161.002 **DEFINITIONS.** In this Chapter:

21
22 (1) “Collaborative law communication” means a statement, whether oral or in a record, or
23 verbal or nonverbal, that:

24 (A) is made to conduct, participate in, continue, or reconvene a collaborative law
25 process; and

26 (B) occurs after the parties sign a collaborative law participation agreement and before
27 the collaborative law process is concluded.

1 (2) “Collaborative law participation agreement” means an agreement by persons to participate
2 in a collaborative law process.

3 (3) “Collaborative law process” means a procedure intended to resolve a collaborative matter
4 without intervention by a tribunal in which persons:

5 (A) sign a collaborative law participation agreement; and

6 (B) are represented by collaborative lawyers.

7 (4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law
8 process.

9 (5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution
10 described in a collaborative law participation agreement. The term includes a dispute, claim, or issue in
11 a proceeding.

12 (6) “Law firm” means:

13 (A) lawyers who practice law together in a partnership, professional corporation, sole
14 proprietorship, limited liability company, or association; and

15 (B) lawyers employed in a legal services organization, or the legal department of a
16 corporation or other organization, or the legal department of a government or governmental
17 subdivision, agency, or instrumentality.

18 (7) “Non-party participant” means a person, other than a party and the party’s collaborative
19 lawyer, that participates in a collaborative law process.

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

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

25 (10) “Proceeding” means:

1 (A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal,
2 including related prehearing and post-hearing motions, conferences, and discovery; or

3 (B) a legislative hearing or similar process.

4 (11) “Prospective party” means a person that discusses with a prospective collaborative lawyer
5 the possibility of signing a collaborative law participation agreement

6 (12) “Record” means information that is inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in perceivable form.

8 (13) “Related to a collaborative matter” means involving the same parties, transaction or
9 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

10 (14) “Sign” means, with present intent to authenticate or adopt a record:

11 (A) to execute or adopt a tangible symbol; or

12 (B) to attach to or logically associate with the record an electronic symbol, sound, or
13 process.

14 (15) “Tribunal” means

15 (A) a court, arbitrator, administrative agency, or other body acting in an adjudicative
16 capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision
17 affecting a party’s interests in a matter; or

18 (B) a legislative body conducting a hearing or similar process.

19 Sec. 161.003. **APPLICABILITY.** This act applies to a collaborative law participation agreement that
20 meets the requirements of Section 161.004, and if applicable, Section 161.031, signed on or after the
21 effective date of this act.

22 Sec. 161.004 **REQUIREMENTS OF COLLABORATIVE LAW PARTICIPATION**
23 **AGREEMENT.**

24 (a) A collaborative law participation agreement must:

25 (1) be in a record;

26 (2) be signed by the parties;

1 (3) state the parties' intention to resolve a collaborative matter through a collaborative
2 law process under this act;

3 (4) describe the nature and scope of the matter;

4 (5) identify the collaborative lawyer who represents each party in the process; and

5 (6) contain a statement by each collaborative lawyer confirming the lawyer's
6 representation of a party in the collaborative law process.

7 (b) Parties may agree to include in a collaborative law participation agreement additional
8 provisions not inconsistent with this chapter.

9 **Sec. 161.005. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.**

10 (a) A collaborative law process begins when the parties sign a collaborative law participation
11 agreement.

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

14 (c) A collaborative law process is concluded by a:

15 (1) resolution of a collaborative matter as evidenced by a signed record;

16 (2) resolution of a part of the collaborative matter, evidenced by a signed record, in
17 which the parties agree that the remaining parts of the matter will not be resolved in the process; or

18 (3) termination of the process.

19 (d) A collaborative law process terminates:

20 (1) when a party gives notice to other parties in a record that the process is ended; or

21 (2) when a party:

22 (A) begins a proceeding related to a collaborative matter without the agreement
23 of all parties; or

24 (B) in a pending proceeding related to the matter:

25 (i) initiates a pleading, motion, order to show cause, or request for a
26 conference with the tribunal;

1 (ii) requests that the proceeding be put on the [tribunal's active
2 calendar]; or

3 (iii) takes similar action requiring notice to be sent to the parties; or
4 (3) except as otherwise provided by subsection (e), when a party discharges a
5 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

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

8 (f) A party may terminate a collaborative law process with or without cause.

9 (g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law
10 process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal
11 of a collaborative lawyer required by subsection (e) (3) is sent to the parties:

12 (1) the unrepresented party engages a successor collaborative lawyer; and

13 (2) in a signed record:

14 (A) the parties consent to continue the process by reaffirming the collaborative
15 law participation agreement;

16 (B) the agreement is amended to identify the successor collaborative lawyer;
17 and

18 (C) the successor collaborative lawyer confirms the lawyer's representation of
19 a party in the collaborative process.

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

23 (i) A collaborative law participation agreement may provide additional methods of concluding
24 a collaborative law process.

25 Sec. 161.006. **PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.**

1 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation
2 agreement to seek to resolve a collaborative matter related to the proceeding. Parties shall file promptly
3 with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and Sec. 161.007
4 and Sec. 161.008, the filing operates as a stay of the proceeding.

5 (b) Parties shall file promptly with the tribunal notice in a record when a collaborative law
6 process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed.
7 The notice may not specify any reason for termination of the process.

8 (c) A tribunal in which a proceeding is stayed under subsection (a) may require parties and
9 collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A
10 status report may include only information on whether the process is ongoing or concluded. It may not
11 include a report, assessment, evaluation, recommendation, finding, or other communication regarding a
12 collaborative law process or collaborative law matter.

13 (d) A tribunal may not consider a communication made in violation of subsection (c).

14 (e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a
15 proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.
16 Sec. 161.007. **EMERGENCY ORDER.** During a collaborative law process, a tribunal may issue
17 emergency orders to protect the health, safety, welfare, or interest of a party or family as defined in -
18 Sec 71.003, Family Code..

19 Sec. 161.008. **EFFECT OF WRITTEN SETTLEMENT AGREEMENT.** Except as to family law
20 cases governed by Section 161.031, a settlement under this chapter is enforceable in the same manner
21 as written settlement agreement under Section 154.071.

22 Sec. 161.009. **DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN**
23 **ASSOCIATED LAW FIRM.**

24 (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from
25 appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

1 (b) Except as otherwise provided in subsection (c) and Sec. 161.010 and Sec. 161.011, a lawyer
2 in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a
3 tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative
4 lawyer is disqualified from doing so under subsection (a).

5 (c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is
6 associated may represent a party:

7 (1) to ask a tribunal to approve an agreement resulting from the collaborative law
8 process; or

9 (2) to seek or defend an emergency order to protect the health, safety, welfare, or
10 interest of a party, or family as defined in V.T.C.A., Family Code, Sec. 71.003, if a successor lawyer is
11 not immediately available to represent that person. In that event, subsections (a) and (b) apply when the
12 party, or family is represented by a successor lawyer or reasonable measures are taken to protect the
13 health, safety, welfare, or interest of that person.

14 **Sec. 161.010. LOW INCOME PARTIES.**

15 (a) The disqualification of Sec. 161.009 (a) applies to a collaborative lawyer representing a
16 party with or without fee.

17 (b) After a collaborative law process concludes, another lawyer in a law firm with which a
18 collaborative lawyer disqualified under Sec. 161.009(a) is associated may represent a party without fee
19 in the collaborative matter or a matter related to the collaborative matter if:

20 (1) the party has an annual income that qualifies the party for free legal representation
21 under the criteria established by the law firm for free legal representation;

22 (2) the collaborative law participation agreement so provides; and

23 (3) the collaborative lawyer is isolated from any participation in the collaborative
24 matter or a matter related to the collaborative matter through procedures within the law firm which are
25 reasonably calculated to isolate the collaborative lawyer from such participation.

26 **Sec. 161.011. GOVERNMENTAL ENTITY AS PARTY.**

1 (a) The disqualification of Sec. 161.009 (a) applies to a collaborative lawyer representing a
2 party that is a government or governmental subdivision, agency, or instrumentality.

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

6 (1) the collaborative law participation agreement so provides; and

7 (2) the collaborative lawyer is isolated from any participation in the collaborative
8 matter or a matter related to the collaborative matter through procedures within the law firm which are
9 reasonably calculated to isolate the collaborative lawyer from such participation.

10 Sec. 161.012. **DISCLOSURE OF INFORMATION.** Except as provided by law other than this
11 Chapter, during the collaborative law process, on the request of another party, a party shall make
12 timely, full, candid, and informal disclosure of information related to the collaborative matter without
13 formal discovery. A party also shall update promptly previously disclosed information that has
14 materially changed. Parties may define the scope of disclosure during the collaborative law process.

15 Sec. 161.013. **STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY**
16 **REPORTING NOT AFFECTED.** This Chapter does not affect:

17 (1) the professional responsibility obligations and standards applicable to a lawyer or other
18 licensed professional; or

19 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a
20 child or adult under the law of this state.

21 Sec. 161.014. **APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.** Before a
22 prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer
23 shall:

24 (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a
25 collaborative law process is appropriate for the prospective party's matter;

1 (2) provide the prospective party with information that the lawyer reasonably believes is
2 sufficient for the party to make an informed decision about the material benefits and risks of a
3 collaborative law process as compared to the material benefits and risks of other reasonably available
4 alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or
5 expert evaluation; and

6 (3) advise the prospective party that:

7 (A) after signing an agreement if a party initiates a proceeding or seeks tribunal
8 intervention in a pending proceeding related to the collaborative matter, the collaborative law process
9 terminates;

10 (B) participation in a collaborative law process is voluntary and any party has the right
11 to terminate unilaterally a collaborative law process with or without cause; and

12 (C) the collaborative lawyer and any lawyer in a law firm with which the collaborative
13 lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the
14 collaborative matter, except as authorized by Sec. 161.009(c), 161.010(b), or 161.011(b).

15 **Sec. 161.015. COERCIVE OR VIOLENT RELATIONSHIP**

16 (a) Before a prospective party signs a collaborative law participation agreement, a prospective
17 collaborative lawyer must make reasonable inquiry whether the prospective party has a history of a
18 coercive or violent relationship with another prospective party.

19 (b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously
20 shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent
21 relationship with another party.

22 (c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the
23 prospective party who consults the lawyer has a history of a coercive or violent relationship with
24 another party or prospective party, the lawyer may not begin or continue a collaborative law process
25 unless:

26 (1) the party or the prospective party requests beginning or continuing a process; and

1 (2) the collaborative lawyer reasonably believes that the safety of the party or
2 prospective party can be protected adequately during a process.

3 **Sec. 161.016. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION.**

4 A collaborative law communication is confidential to the extent agreed by the parties in a signed record
5 or as provided by law of this state other than this Chapter.

6 **Sec. 161.017 PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW**
7 **COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

8 (a) Subject to Sec. 161.018 and 161.019, a collaborative law communication is privileged under
9 subsection (b), is not subject to discovery, and is not admissible in evidence.

10 (b) In a proceeding, the following privileges apply:

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

13 (2) A non-party participant may refuse to disclose, and may prevent any other person
14 from disclosing, a collaborative law communication of the non-party participant.

15 (c) Evidence or information that is otherwise admissible or subject to discovery does not
16 become inadmissible or protected from discovery solely because of its disclosure or use in a
17 collaborative law process.

18 **Sec. 161.018. WAIVER AND PRECLUSION OF PRIVILEGE.**

19 (a) A privilege under Sec. 161.017 may be waived in a record or orally during a proceeding if it
20 is expressly waived by all parties and, in the case of the privilege of a non-party participant, it is also
21 expressly waived by the non-party participant.

22 (b) A person that makes a disclosure or representation about a collaborative law communication
23 which prejudices another person in a proceeding may not assert a privilege under Sec. 161.017, but this
24 preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or
25 representation.

26 **Sec. 161.019. LIMITS OF PRIVILEGE.**

1 (a) There is no privilege under Sec. 161.017 for a collaborative law communication that is:

2 (1) available to the public under V.T.C.A., Government Code, Chapter 552 or made
3 during a session of a collaborative law process that is open, or is required by law to be open, to the
4 public;

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

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

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

10 (b) The privileges under Sec. 161.017 for a collaborative law communication do not apply to
11 the extent that a communication is:

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

14 (2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation
15 of a child or adult, unless the [child protective services agency or adult protective services agency] is a
16 party to or otherwise participates in the process.

17 (c) There is no privilege under Sec. 161.017 if a tribunal finds, after a hearing in camera, that
18 the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise
19 available, the need for the evidence substantially outweighs the interest in protecting confidentiality,
20 and the collaborative law communication is sought or offered in:

21 (1) a tribunal proceeding involving a felony; or

22 (2) a proceeding seeking rescission or reformation of a contract arising out of the
23 collaborative law process or in which a defense to avoid liability on the contract is asserted.

24 (d) If a collaborative law communication is subject to an exception under subsection (b) or (c),
25 only the part of the communication necessary for the application of the exception may be disclosed or
26 admitted.

1 (e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c)
2 does not make the evidence or any other collaborative law communication discoverable or admissible
3 for any other purpose.

4 (f) The privileges under Sec. 161.017 do not apply if the parties agree in advance in a signed
5 record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative
6 law process is not privileged. This subsection does not apply to a collaborative law communication
7 made by a person that did not receive actual notice of the agreement before the communication was
8 made.

9 **Sec. 161.020. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.**

10 (a) If an agreement fails to meet the requirements of Sec. 161.004, or a lawyer fails to comply
11 with Sec. 161.014 or Sec. 161.015, a tribunal may nonetheless find that the parties intended to enter
12 into a collaborative law participation agreement if they:

13 (1) signed a record indicating an intention to enter into a collaborative law participation
14 agreement; and

15 (2) reasonably believed they were participating in a collaborative law process.

16 (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice
17 require, the tribunal may:

18 (1) enforce an agreement evidenced by a record resulting from the process in which the
19 parties participated;

20 (2) apply the disqualification provisions of Sec. 161.005, Sec. 161.006, Sec. 161.009,
21 Sec. 161.010, and Sec. 161.011; and

22 (3) apply the privileges under Sec. 161.017

23 **Sec. 161.021. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and
24 construing this Chapter, consideration must be given to the need to promote uniformity of the law with
25 respect to its subject matter among states that enact a collaborative law procedures act.

1 (1) a status report not later than the 180th day after the date of the collaborative law
2 participation agreement to use the procedures was signed; and

3 (2) a status report on or before the first anniversary of the date of the collaborative law
4 participation agreement was signed to use the procedures, accompanied by a motion for continuance
5 that the court shall grant if the status report indicates the desire of the parties to continue to use
6 collaborative law process.

7 (e) If the collaborative law process does not result in a settlement on or before the second
8 anniversary of the date that the proceeding was filed, the court may,

9 (1) set the proceeding for trial on the regular docket; or

10 (2) dismiss the proceeding without prejudice.

11 **SECTION 2. SEVERABILITY.** If any provision of this Chapter or its application to any person or
12 circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter
13 which can be given effect without the invalid provision or application, and to this end the provisions of
14 this Chapter are severable.

15 **SECTION 3. EFFECTIVE DATE.** This Act takes effect September 1, 2011.

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