

SUBSTITUTE FOR
SENATE BILL NO. 714

A bill to adopt the uniform collaborative law act; to allow parties to agree to a collaborative alternative dispute resolution process as an alternative to litigation; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform collaborative law act".

3 Sec 2. As used in this act:

4 (a) "Collaborative law communication" means a statement,
5 whether oral or in a record, or verbal or nonverbal, to which both
6 of the following apply:

7 (i) The statement is made to conduct, participate in, continue,
8 or reconvene a collaborative law process.

9 (ii) The statement occurs after the parties sign a
10 collaborative law participation agreement and before the

1 collaborative law process is concluded.

2 (b) "Collaborative law participation agreement" means an
3 agreement by persons to participate in a collaborative law process.

4 (c) "Collaborative law process" means a procedure intended to
5 resolve a collaborative matter without intervention by a tribunal
6 in which persons sign a collaborative law participation agreement
7 and are represented by collaborative lawyers.

8 (d) "Collaborative lawyer" means a lawyer who represents a
9 party in a collaborative law process.

10 (e) "Collaborative matter" means a dispute, transaction,
11 claim, problem, or issue for resolution, including a dispute,
12 claim, or issue in a proceeding, that is described in a
13 collaborative law participation agreement and arises under the
14 family or domestic relations law of this state, including any of
15 the following:

16 (i) Marriage, divorce, dissolution, annulment, and property
17 distribution.

18 (ii) Child custody, visitation, and parenting time.

19 (iii) Alimony, maintenance, and child support.

20 (iv) Adoption.

21 (v) Parentage.

22 (vi) Premarital, marital, and postmarital agreements.

23 (f) "Law firm" means both of the following:

24 (i) Lawyers who practice law together in a partnership,
25 professional corporation, sole proprietorship, limited liability
26 company, or association.

27 (ii) Lawyers employed in a legal services organization, or the

1 legal department of a corporation or other organization, or the
2 legal department of a government or governmental subdivision,
3 agency, or instrumentality.

4 (g) "Nonparty participant" means a person, other than a party
5 and the party's collaborative lawyer, that participates in a
6 collaborative law process.

7 (h) "Party" means a person that signs a collaborative law
8 participation agreement and whose consent is necessary to resolve a
9 collaborative matter.

10 (i) "Person" means an individual, corporation, business trust,
11 estate, trust, partnership, limited liability company, association,
12 joint venture, public corporation, government or governmental
13 subdivision, agency, or instrumentality, or any other legal or
14 commercial entity.

15 (j) "Proceeding" means any of the following:

16 (i) A judicial, administrative, arbitral, or other adjudicative
17 process before a tribunal, including related prehearing and
18 posthearing motions, conferences, and discovery.

19 (ii) A legislative hearing or similar process.

20 (k) "Prospective party" means a person that discusses with a
21 prospective collaborative lawyer the possibility of signing a
22 collaborative law participation agreement.

23 (l) "Record" means information that is inscribed on a tangible
24 medium or that is stored in an electronic or other medium and is
25 retrievable in perceivable form.

26 (m) "Related to a collaborative matter" means involving the
27 same parties, transaction or occurrence, nucleus of operative fact,

1 dispute, claim, or issue as the collaborative matter.

2 (n) "Sign" means, with present intent to authenticate or adopt
3 a record, either of the following:

4 (i) To execute or adopt a tangible symbol.

5 (ii) To attach to or logically associate with the record an
6 electronic symbol, sound, or process.

7 (o) "Tribunal" means any of the following:

8 (i) A court, arbitrator, administrative agency, or other body
9 acting in an adjudicative capacity that, after presentation of
10 evidence or legal argument, has jurisdiction to render a decision
11 affecting a party's interests in a matter.

12 (ii) A legislative body conducting a hearing or similar
13 process.

14 Sec. 3. This act applies to a collaborative law participation
15 agreement that meets the requirements of section 4 signed on or
16 after the effective date of this act.

17 Sec. 4. (1) A collaborative law participation agreement must
18 satisfy all of the following requirements:

19 (a) Be in a record.

20 (b) Be signed by the parties.

21 (c) State the parties' intention to resolve a collaborative
22 matter through a collaborative law process under this act.

23 (d) Describe the nature and scope of the matter.

24 (e) Identify the collaborative lawyer who represents each
25 party in the process.

26 (f) Contain a statement by each collaborative lawyer
27 confirming the lawyer's representation of a party in the

1 collaborative law process.

2 (2) Parties may agree to include in a collaborative law
3 participation agreement additional provisions not inconsistent with
4 this act.

5 Sec. 5. (1) A collaborative law process begins when the
6 parties sign a collaborative law participation agreement.

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

9 (3) A collaborative law process is concluded by 1 of the
10 following:

11 (a) Resolution of a collaborative matter as evidenced by a
12 signed record.

13 (b) Resolution of a part of the collaborative matter,
14 evidenced by a signed record, in which the parties agree that the
15 remaining parts of the matter will not be resolved in the process.

16 (c) Termination of the process.

17 (4) A collaborative law process terminates when any of the
18 following occur:

19 (a) A party gives notice to other parties in a record that the
20 process is ended.

21 (b) A party does any of the following:

22 (i) Begins a proceeding related to a collaborative matter
23 without the agreement of all parties.

24 (ii) In a pending proceeding related to the matter, does any of
25 the following:

26 (A) Initiates a pleading, motion, order to show cause, or
27 request for a conference with the tribunal.

1 (B) Requests that the proceeding be put on the tribunal's
2 active calendar.

3 (C) Takes similar action requiring notice to be sent to the
4 parties.

5 (c) Except as otherwise provided by subsection (7), a party
6 discharges a collaborative lawyer or a collaborative lawyer
7 withdraws from further representation of a party.

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

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

12 (7) Notwithstanding the discharge or withdrawal of a
13 collaborative lawyer, a collaborative law process continues if, not
14 later than 30 days after the date that the notice of the discharge
15 or withdrawal of a collaborative lawyer required by subsection (5)
16 is sent to the parties, both of the following occur:

17 (a) The unrepresented party engages a successor collaborative
18 lawyer.

19 (b) A record is signed that satisfies all of the following
20 requirements:

21 (i) The parties consent in the record to continue the process
22 by reaffirming the collaborative law participation agreement.

23 (ii) The agreement is amended in the record to identify the
24 successor collaborative lawyer.

25 (iii) The successor collaborative lawyer confirms in the record
26 the lawyer's representation of a party in the collaborative
27 process.

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

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

7 Sec. 6. (1) Persons in a proceeding pending before a tribunal
8 may sign a collaborative law participation agreement to seek to
9 resolve a collaborative matter related to the proceeding. The
10 parties shall file promptly with the tribunal a notice of the
11 agreement after it is signed. Subject to subsection (3) and
12 sections 7 and 8, the filing operates as an application for a stay
13 of the proceeding.

14 (2) The parties shall file promptly with the tribunal notice
15 in a record when a collaborative law process concludes. The stay of
16 the proceeding under subsection (1) is lifted when the notice is
17 filed. The notice may not specify any reason for termination of the
18 process.

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

27 (4) A tribunal may not consider a communication made in

Senate Bill No. 714 (S-1) as amended May 20, 2014

1 violation of subsection (3).

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

6 Sec. 7. During a collaborative law process, a tribunal may
7 issue emergency orders to protect the health, safety, welfare, or
8 interest of a party as provided in section 2950 of the revised
9 judicature act of 1961, 1961 PA 236, MCL 600.2950.

10 Sec. 8. A tribunal may approve an agreement resulting from a
11 collaborative law process.

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20 Sec. 9. (1) Except as otherwise provided in subsection (3), a
21 collaborative lawyer is disqualified from appearing before a
22 tribunal to represent a party in a proceeding related to the
23 collaborative matter.

24 (2) Except as otherwise provided in subsection (3) and
25 sections 10 and 11, a lawyer in a law firm with which the
26 collaborative lawyer is associated is disqualified from appearing
27 before a tribunal to represent a party in a proceeding related to

1 the collaborative matter if the collaborative lawyer is
2 disqualified from doing so under subsection (1).

3 (3) A collaborative lawyer or a lawyer in a law firm with
4 which the collaborative lawyer is associated may represent a party
5 to do either of the following:

6 (a) Ask a tribunal to approve an agreement resulting from the
7 collaborative law process.

8 (b) Seek or defend an emergency order to protect the health,
9 safety, welfare, or interest of a party if a successor lawyer is
10 not immediately available to represent that person.

11 (4) If subsection (3)(b) applies, a collaborative lawyer, or
12 lawyer in a law firm with which the collaborative lawyer is
13 associated, may represent a party only until the person is
14 represented by a successor lawyer or reasonable measures are taken
15 to protect the health, safety, welfare, or interest of the person.

16 Sec. 10. (1) The disqualification of section 9(1) applies to a
17 collaborative lawyer representing a party with or without fee.

18 (2) After a collaborative law process concludes, another
19 lawyer in a law firm with which a collaborative lawyer disqualified
20 under section 9(1) is associated may represent a party without fee
21 in the collaborative matter or a matter related to the
22 collaborative matter if all of the following apply:

23 (a) The party has an annual income that qualifies the party
24 for free legal representation under the criteria established by the
25 law firm for free legal representation.

26 (b) The collaborative law participation agreement so provides.

27 (c) The collaborative lawyer is isolated from any

1 participation in the collaborative matter or a matter related to
2 the collaborative matter through procedures within the law firm
3 that are reasonably calculated to isolate the collaborative lawyer
4 from the participation.

5 Sec. 11. (1) The disqualification of section 9(1) applies to a
6 collaborative lawyer representing a party that is a government or
7 governmental subdivision, agency, or instrumentality.

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

13 (a) The collaborative law participation agreement so provides.

14 (b) The collaborative lawyer is isolated from any
15 participation in the collaborative matter or a matter related to
16 the collaborative matter through procedures within the law firm
17 that are reasonably calculated to isolate the collaborative lawyer
18 from the participation.

19 Sec. 12. Except as provided by law other than this act, during
20 the collaborative law process, on the request of another party, a
21 party shall make timely, full, candid, and informal disclosure of
22 information related to the collaborative matter without formal
23 discovery. A party also shall update promptly previously disclosed
24 information that has materially changed. The parties may define the
25 scope of disclosure during the collaborative law process.

26 Sec. 13. This act does not affect either of the following:

27 (a) The professional responsibility obligations and standards

1 applicable to a lawyer or other licensed professional.

2 (b) The obligation of a person to report abuse or neglect,
3 abandonment, or exploitation of a child or adult under the law of
4 this state.

5 Sec. 14. Before a prospective party signs a collaborative law
6 participation agreement, a prospective collaborative lawyer shall
7 do all of the following:

8 (a) Assess with the prospective party factors the lawyer
9 reasonably believes relate to whether a collaborative law process
10 is appropriate for the prospective party's matter.

11 (b) Provide the prospective party with information that the
12 lawyer reasonably believes is sufficient for the party to make an
13 informed decision about the material benefits and risks of a
14 collaborative law process as compared to the material benefits and
15 risks of other reasonably available alternatives for resolving the
16 proposed collaborative matter, such as litigation, mediation,
17 arbitration, or expert evaluation.

18 (c) Advise the prospective party of all of the following:

19 (i) That after signing an agreement if a party initiates a
20 proceeding or seeks tribunal intervention in a pending proceeding
21 related to the collaborative matter, the collaborative law process
22 terminates.

23 (ii) That participation in a collaborative law process is
24 voluntary and any party has the right to terminate unilaterally a
25 collaborative law process with or without cause.

26 (iii) That the collaborative lawyer and any lawyer in a law firm
27 with which the collaborative lawyer is associated may not appear

1 before a tribunal to represent a party in a proceeding related to
2 the collaborative matter, except as authorized by section 9(3),
3 10(2), or 11(2).

4 Sec. 15. (1) Before a prospective party signs a collaborative
5 law participation agreement, a prospective collaborative lawyer
6 shall make reasonable inquiry whether the prospective party has a
7 history of a coercive or violent relationship with another
8 prospective party. A reasonable inquiry includes the use of the
9 domestic violence screening protocol for mediation provided by the
10 state court administrative office.

11 (2) Throughout a collaborative law process, a collaborative
12 lawyer reasonably and continuously shall assess whether the party
13 the collaborative lawyer represents has a history of a coercive or
14 violent relationship with another party.

15 (3) If a collaborative lawyer reasonably believes that the
16 party the lawyer represents or the prospective party who consults
17 the lawyer has a history of a coercive or violent relationship with
18 another party or prospective party, the lawyer may not begin or
19 continue a collaborative law process unless both of the following
20 apply:

21 (a) The party or the prospective party requests beginning or
22 continuing a process.

23 (b) The collaborative lawyer reasonably believes that the
24 safety of the party or prospective party can be protected
25 adequately during a process.

26 Sec. 16. A collaborative law communication is confidential to
27 the extent agreed by the parties in a signed record or as provided

1 by law of this state other than this act.

2 Sec. 17. (1) Subject to sections 18 and 19, a collaborative
3 law communication is privileged under subsection (2), is not
4 subject to discovery, and is not admissible in evidence.

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

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

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

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

15 Sec. 18. (1) A privilege under section 17 may be waived in a
16 record or orally during a proceeding if it is expressly waived by
17 all parties and, in the case of the privilege of a nonparty
18 participant, it is also expressly waived by the nonparty
19 participant.

20 (2) A person that makes a disclosure or representation about a
21 collaborative law communication that prejudices another person in a
22 proceeding may not assert a privilege under section 17, but this
23 preclusion applies only to the extent necessary for the person
24 prejudiced to respond to the disclosure or representation.

25 Sec. 19. (1) There is no privilege under section 17 for a
26 collaborative law communication that is any of the following:

27 (a) Available to the public under the freedom of information

1 act, 1976 PA 442, MCL 15.231 to 15.246, or made during a session of
2 a collaborative law process that is open, or is required by law to
3 be open, to the public.

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

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

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

12 (2) The privileges under section 17 for a collaborative law
13 communication do not apply to the extent that a communication is
14 either of the following:

15 (a) Sought or offered to prove or disprove a claim or
16 complaint of professional misconduct or malpractice arising from or
17 related to a collaborative law process.

18 (b) Sought or offered to prove or disprove abuse, neglect,
19 abandonment, or exploitation of a child or adult, unless the
20 department of human services is a party to or otherwise
21 participates in the process.

22 (3) There is no privilege under section 17 if a tribunal
23 finds, after a hearing in camera, that the party seeking discovery
24 or the proponent of the evidence has shown the evidence is not
25 otherwise available, the need for the evidence substantially
26 outweighs the interest in protecting confidentiality, and the
27 collaborative law communication is sought or offered in any of the

1 following:

2 (a) A court proceeding involving a felony or misdemeanor.

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

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

10 (5) Disclosure or admission of evidence excepted from the
11 privilege under subsection (2) or (3) does not make the evidence or
12 any other collaborative law communication discoverable or
13 admissible for any other purpose.

14 (6) The privileges under section 17 do not apply if the
15 parties agree in advance in a signed record, or if a record of a
16 proceeding reflects agreement by the parties, that all or part of a
17 collaborative law process is not privileged. This subsection does
18 not apply to a collaborative law communication made by a person that
19 did not receive actual notice of the agreement before the
20 communication was made.

21 Sec. 20. (1) If an agreement fails to meet the requirements of
22 section 4, or a lawyer fails to comply with section 14 or 15, a
23 tribunal may nonetheless find that the parties intended to enter
24 into a collaborative law participation agreement if both of the
25 following apply:

26 (a) The parties signed a record indicating an intention to
27 enter into a collaborative law participation agreement.

1 (b) The parties reasonably believed they were participating in
2 a collaborative law process.

3 (2) If a tribunal makes the findings specified in subsection
4 (1), and the interests of justice require, the tribunal may do all
5 of the following:

6 (a) Enforce an agreement evidenced by a record resulting from
7 the process in which the parties participated.

8 (b) Apply the disqualification provisions of sections 5, 6, 9,
9 10, and 11.

10 (c) Apply a privilege under section 17.

11 Sec. 21. In applying and construing this uniform act,
12 consideration must be given to the need to promote uniformity of
13 the law with respect to its subject matter among states that enact
14 it.

15 Sec. 22. This act modifies, limits, and supersedes the federal
16 electronic signatures in global and national commerce act, 15 USC
17 7001 to 7031, but does not modify, limit, or supersede section
18 101(c) of that act, 15 USC 7001(c), or authorize electronic
19 delivery of any of the notices described in section 103(b) of that
20 act, 15 USC 7003(b).

21 Sec. 24. This act takes effect 180 days after it is enacted
22 into law.