

BILL ANALYSIS

Senate Research Center
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S.B. 942
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Different types of alternative dispute resolution procedures are currently encouraged to bring about mutually agreeable solutions to disputes and to avoid costly and protracted litigation. Collaborative law is a new dispute resolution method which offers parties the option to negotiate in good faith for an out-of-court settlement. The parties make a full exchange of records, jointly hire experts, and are authorized to terminate participation in the process at any time. However, collaborative law is currently not available in civil cases other than in cases regarding family law.

As proposed, S.B. 942 authorizes litigants in all types of civil disputes to use the collaborative law process.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 7, Civil Practice and Remedies Code, by adding Chapter 161, as follows:

CHAPTER 161. COLLABORATIVE LAW

Sec. 161.001. POLICY. Provides that it is the policy of this state to encourage the peaceable resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures.

Sec. 161.002. COLLABORATIVE LAW PROCEDURES. (a) Authorizes parties and their attorneys, on a written agreement, to resolve a dispute using collaborative law procedures.

(b) Provides that collaborative law is a voluntary procedure in which the parties and their attorneys agree in writing to use their best efforts and make a good faith attempt to resolve their dispute on an agreed basis without resorting to judicial intervention except for certain procedures. Prohibits the parties' attorneys from serving as litigation counsel except to request the court to approve the settlement agreement.

(c) Requires a collaborative law agreement (agreement) to include certain provisions.

(d) Authorizes the agreement to contain other provisions as agreed to by the parties consistent with the good faith effort to collaboratively settle the matter.

(e) Entitles a party to judgment on an agreement if the agreement provides a prominently displayed statement, highlighted in a certain way, that the agreement is not subject to revocation, and if the agreement is signed by each party to the agreement and their respective attorneys, notwithstanding Rule 11 (Agreements to be in Writing), Texas Rules of Civil Procedure, or another rule or law.

(f) Prohibits a court that is notified 30 days before trial that the parties are using collaborative law procedures (procedures), subject to Subsection (h), from taking certain actions in relation to a suit until a party notifies the court that said procedures did not result in a settlement.

(g) Requires the parties to notify the court if the procedures resulted in a settlement. Requires the parties, if settlement is not reached, to file a status report with the court no later than the 180th day after the date of the written agreement to use procedures, and a status report on or before the first anniversary of the date of the written agreement to use procedures, accompanied by a motion for continuance, that the court is required to grant, if the report indicates the desire of the parties to continue to use the procedures.

(h) Authorizes the court to set the suit for trial on the regular docket if the procedures do not result in a settlement on or before the second anniversary of the date suit was filed.

Sec. 161.003. CONFIDENTIALITY OF COLLABORATIVE LAW PROCEDURES. Provides for equal application of the provisions for confidentiality of alternative dispute resolution procedures under Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code, toward procedures under this chapter.

SECTION 2. Makes application of this Act to prospective to an action that commenced on or after the effective date of this Act. Makes application of this Act retroactive to an action commenced before the effective date of this Act if the trial has not begun before the effective date of this Act.

SECTION 3. Effective date: September 1, 2007.