

By: Zedler

H.B. No. 2512

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of a uniform collaborative law Act.

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

SECTION 1. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. UNIFORM COLLABORATIVE LAW ACT

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 161.001. POLICY. 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. CONFLICTS BETWEEN PROVISIONS. If a provision of this chapter conflicts with another provision of this code or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails. This chapter does not apply to family law matters governed by Chapter 15, Family Code.

Sec. 161.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a collaborative law process Act.

Sec. 161.004. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National

1 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
2 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
3 7001(c)), or authorize electronic delivery of any of the notices
4 described in Section 103(b) of that Act (15 U.S.C. Section
5 7003(b)).

6 SUBCHAPTER B. GENERAL PROVISIONS

7 Sec. 161.051. SHORT TITLE. This chapter may be cited as the
8 Uniform Collaborative Law Act.

9 Sec. 161.052. DEFINITIONS. In this chapter:

10 (1) "Collaborative law communication" means a
11 statement made by a party or nonparty participant, whether oral or
12 in a record, or verbal or nonverbal, that:

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

15 (B) occurs after the parties sign a collaborative
16 law participation agreement and before the collaborative law
17 process is terminated or otherwise concluded.

18 (2) "Collaborative law participation agreement" means
19 an agreement by persons to participate in a collaborative law
20 process in conformity with this chapter.

21 (3) "Collaborative law process" means a procedure
22 intended to resolve a collaborative matter without intervention by
23 a tribunal in which parties:

24 (A) sign a collaborative law participation
25 agreement; and

26 (B) are represented by collaborative lawyers.

27 (4) "Collaborative lawyer" means a lawyer who

1 represents a party in a collaborative law process.

2 (5) "Collaborative matter" means a dispute,
3 transaction, claim, problem, or issue for resolution described in a
4 collaborative law participation agreement. The term includes a
5 dispute, claim, or issue in a proceeding.

6 (6) "Law firm" means:

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

10 (B) lawyers employed in a legal services
11 organization or in the legal department of a corporation or other
12 organization or of a government or governmental subdivision,
13 agency, or instrumentality.

14 (7) "Nonparty participant" means a person, including a
15 collaborative lawyer, other than a party, who participates in a
16 collaborative law process.

17 (8) "Party" means a person who signs a collaborative
18 law participation agreement and whose consent is necessary to
19 resolve a collaborative matter.

20 (9) "Proceeding" means:

21 (A) a judicial, administrative, arbitral, or
22 other adjudicative process before a tribunal, including related
23 prehearing and posthearing motions, conferences, and discovery; or

24 (B) a legislative hearing or similar process.

25 (10) "Prospective party" means a person who discusses
26 with a prospective collaborative lawyer the possibility of signing
27 a collaborative law participation agreement.

1 (11) "Record" means information that is inscribed on a
2 tangible medium or that is stored in an electronic or other medium
3 and is retrievable in perceivable form.

4 (12) "Related to a collaborative matter" means a
5 matter involving the same parties, occurrence, and nucleus of
6 operative facts as the collaborative matter.

7 (13) "Sign" means, with present intent to authenticate
8 or adopt a record, to:

9 (A) execute or adopt a tangible symbol; or

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

12 (14) "Tribunal" means:

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

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

19 SUBCHAPTER C. COLLABORATIVE LAW PROCESS

20 Sec. 161.101. REQUIREMENTS OF COLLABORATIVE LAW
21 PARTICIPATION AGREEMENT. (a) A collaborative law participation
22 agreement must:

23 (1) be in a record;

24 (2) be signed by the parties;

25 (3) state the parties' intent to resolve a
26 collaborative matter through a collaborative law process under this
27 chapter;

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

2 (5) identify the collaborative lawyer who represents
3 each party in the process;

4 (6) contain a statement or other representation by
5 each collaborative lawyer confirming the lawyer's representation
6 of a party in the collaborative law process; and

7 (7) state that the collaborative lawyers are
8 disqualified from representing their respective parties in a
9 proceeding before a tribunal related to the collaborative matter,
10 except as otherwise provided by this chapter.

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

14 Sec. 161.102. BEGINNING AND CONCLUDING COLLABORATIVE LAW
15 PROCESS. (a) A collaborative law process begins when the parties
16 sign a collaborative law participation agreement.

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

19 (c) A collaborative law process is concluded by:

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

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

26 (3) termination of the process under Subsection (d) or
27 as otherwise provided by this chapter.

1 (d) A collaborative law process terminates:

2 (1) when a party or collaborative lawyer gives notice
3 to all other parties or collaborative lawyers in a record that the
4 process is ended;

5 (2) when a party:

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

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

10 (i) without the agreement of all parties,
11 initiates a pleading, motion, or request for a conference with the
12 tribunal;

13 (ii) initiates an order to show cause or
14 requests that the proceeding be put on the tribunal's active
15 calendar; or

16 (iii) takes similar action requiring notice
17 to be sent to the parties; or

18 (3) except as otherwise provided by Subsection (g),
19 when a party discharges a collaborative lawyer or a collaborative
20 lawyer withdraws from further representation of a party.

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

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

26 (g) Notwithstanding the discharge or withdrawal of a
27 collaborative lawyer, a collaborative law process continues if, not

1 later than the 30th day after the date the notice of the
2 collaborative lawyer's discharge or withdrawal required by
3 Subsection (e) is sent to the parties:

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

6 (2) in a signed record:

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

9 (B) the agreement is amended to identify the
10 successor collaborative lawyer; and

11 (C) the successor collaborative lawyer confirms
12 the lawyer's representation of a party in the collaborative law
13 process.

14 (h) A collaborative law process does not conclude if, with
15 the consent of the parties to a signed record resolving all or part
16 of the collaborative matter, a party requests a tribunal to approve
17 a resolution of the collaborative matter or any part of that matter
18 as evidenced by a signed record.

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

21 (j) All applicable statutes of limitations shall
22 automatically toll beginning on the earlier of the date of the
23 commencement of a proceeding or the signing of the collaborative
24 law participation agreement by all parties in the collaborative law
25 process. Applicable limitations periods shall recommence running
26 with respect to a party on the later of the date on which the
27 proceeding terminates or otherwise concludes, or the 30th day after

1 the date on which the collaborative law process terminates or
2 otherwise concludes as to that party, unless a longer tolling
3 period is agreed to by all parties in the collaborative law
4 participation agreement.

5 Sec. 161.103. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS
6 REPORT. (a) Persons in a proceeding pending before a tribunal may
7 sign a collaborative law participation agreement to seek to resolve
8 a collaborative matter related to the proceeding. The parties
9 shall file promptly with the tribunal a notice of the agreement
10 after the agreement is signed. Subject to Subsection (c) and
11 Sections 161.104 and 161.105, the filing operates as a stay of the
12 proceeding.

13 (b) Each party shall file promptly with the tribunal notice
14 in a record when a collaborative law process terminates or
15 otherwise concludes. The stay of the proceeding under Subsection
16 (a) is lifted when the notice is filed. The notice may not specify
17 any reason for terminating or otherwise concluding the process.

18 (c) A tribunal in which a proceeding is stayed under
19 Subsection (a) may require the parties and collaborative lawyers to
20 provide a status report on the collaborative law process and the
21 proceeding. A status report:

22 (1) may include only information on whether the
23 process is ongoing or concluded; and

24 (2) may not include a report, assessment, evaluation,
25 recommendation, finding, or other communication regarding a
26 collaborative law process or collaborative matter.

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

1 violation of Subsection (c).

2 (e) Two years after the date of a stay of a proceeding and
3 after providing the parties notice and an opportunity to be heard, a
4 tribunal may dismiss a proceeding based on delay or failure to
5 prosecute.

6 Sec. 161.104. EMERGENCY ORDER. During a collaborative law
7 process, a tribunal may issue an emergency order to protect the
8 health, safety, welfare, or interest of a party or nonparty
9 participant. If the emergency order is granted without the
10 agreement of all parties, the granting of the order terminates the
11 collaborative law process.

12 Sec. 161.105. EFFECT OF WRITTEN SETTLEMENT AGREEMENT. (a)
13 A settlement agreement under this chapter is enforceable in the
14 same manner as a written settlement agreement under Section
15 154.071.

16 (b) Notwithstanding Rule 11, Texas Rules of Civil
17 Procedure, or another rule or law, a party is entitled to judgment
18 on a settlement agreement under this chapter if the agreement:

19 (1) provides, in a prominently displayed statement
20 that is in boldfaced type, capitalized, or underlined, that the
21 agreement is not subject to revocation; and

22 (2) is signed by each party to the agreement and the
23 collaborative lawyer of each party.

24 Sec. 161.106. DISQUALIFICATION OF COLLABORATIVE LAWYER AND
25 LAWYERS IN ASSOCIATED LAW FIRM; EXCEPTION. (a) Except as otherwise
26 provided by Subsection (c) and Sections 161.107 and 161.108, a
27 collaborative lawyer is disqualified from appearing before a

1 tribunal to represent a party in a proceeding related to the
2 collaborative matter.

3 (b) Except as otherwise provided by Subsection (c) and
4 Sections 161.107 and 161.108, a lawyer in a law firm with which the
5 collaborative lawyer is associated is disqualified from appearing
6 before a tribunal to represent a party in a proceeding related to
7 the collaborative matter if the collaborative lawyer is
8 disqualified from doing so under Subsection (a).

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

11 (1) to request a tribunal to approve an agreement
12 resulting from the collaborative law process; or

13 (2) to seek or defend an emergency order to protect the
14 health, safety, welfare, or interest of a party or nonparty
15 participant if a successor lawyer is not immediately available to
16 represent that person.

17 (d) The exception prescribed by Subsection (c)(2) does not
18 apply after the party is represented by a successor lawyer or
19 reasonable measures are taken to protect the health, safety,
20 welfare, or interest of that person.

21 Sec. 161.107. LOW-INCOME PARTIES. (a) The disqualification
22 of a collaborative lawyer as provided by Section 161.106(a) applies
23 to a collaborative lawyer representing a party with or without a
24 fee.

25 (b) After a collaborative law process concludes, another
26 lawyer in a law firm with which a collaborative lawyer disqualified
27 under Section 161.106(a) is associated may represent a party

1 without a fee in the collaborative matter or a matter related to the
2 collaborative matter if:

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

6 (2) the collaborative law participation agreement
7 authorizes that representation; and

8 (3) the collaborative lawyer is isolated from any
9 participation in the collaborative matter or a matter related to
10 the collaborative matter through procedures within the law firm
11 that are reasonably calculated to isolate the collaborative lawyer
12 from such participation.

13 Sec. 161.108. GOVERNMENTAL ENTITY AS PARTY. (a) The
14 disqualification prescribed by Section 161.106(a) applies to a
15 collaborative lawyer representing a party that is a government or
16 governmental subdivision, agency, or instrumentality.

17 (b) After a collaborative law process concludes, another
18 lawyer in the government or governmental subdivision, agency, or
19 instrumentality with which the collaborative lawyer is associated
20 may represent the government or governmental subdivision, agency,
21 or instrumentality in the collaborative matter or a matter related
22 to the collaborative matter if:

23 (1) the collaborative law participation agreement
24 authorizes that representation; and

25 (2) the collaborative lawyer is isolated from any
26 participation in the collaborative matter or a matter related to
27 the collaborative matter through procedures within the law firm

1 that are reasonably calculated to isolate the collaborative lawyer
2 from such participation.

3 Sec. 161.109. DISCLOSURE OF INFORMATION. (a) Except as
4 otherwise provided by law other than this chapter, during the
5 collaborative law process, on the request of another party, a party
6 shall make timely, full, candid, and informal disclosure of
7 non-privileged information related to the collaborative matter to
8 all participants in the collaborative law process without formal
9 discovery under the rules of the tribunal. A party shall update
10 promptly any previously disclosed information that has materially
11 changed.

12 (b) The parties may define the scope and terms of the
13 disclosure under Subsection (a) during the collaborative law
14 process.

15 Sec. 161.110. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND
16 MANDATORY REPORTING NOT AFFECTED. This chapter does not affect:

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

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

22 Sec. 161.111. INFORMED CONSENT. Before a prospective party
23 signs a collaborative law participation agreement, a prospective
24 collaborative lawyer must:

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

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

8 (3) advise the prospective party that:

9 (A) 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 without the consent
12 of all parties in a signed record, the collaborative law process
13 terminates;

14 (B) participation in a collaborative law process
15 is voluntary and any party or collaborative lawyer has the right to
16 terminate unilaterally a collaborative law process with or without
17 cause; and

18 (C) the collaborative lawyer and any lawyer in a
19 law firm with which the collaborative lawyer is associated may not
20 appear before a tribunal to represent a party in a proceeding
21 related to the collaborative matter, except as authorized by
22 Section 161.106(c), 161.107(b), or 161.108(b).

23 Sec. 161.112. CONFIDENTIALITY OF COLLABORATIVE LAW
24 COMMUNICATION. (a) A collaborative law communication is
25 confidential to the extent agreed to by the parties in a signed
26 record or as provided by law other than this chapter.

27 (b) The conduct and demeanor in the collaborative law

1 process of the parties and nonparty participants, including their
2 collaborative lawyers, are confidential.

3 (c) If the parties agree in a signed record, communications
4 related to the collaborative matter occurring before the signing of
5 the collaborative law participation agreement are confidential.

6 (d) If this section conflicts with other legal requirements
7 for disclosure of communications, records, or materials, the issue
8 of confidentiality may be presented to the tribunal having
9 jurisdiction of the proceeding to determine, in camera, whether the
10 facts, circumstances, and context of the communications or
11 materials sought to be disclosed warrant a protective order of the
12 tribunal or whether the communications or materials are subject to
13 disclosure. The presentation of the issue of confidentiality to a
14 tribunal under this subsection does not constitute a termination of
15 the collaborative law process under Section 161.102(d)(2)(A).

16 (e) A party or nonparty participant may disclose
17 confidential collaborative law communications to a party's
18 successor counsel, subject to the terms of confidentiality in the
19 collaborative law participation agreement. Collaborative law
20 communications disclosed under this subsection remain
21 confidential.

22 Sec. 161.113. PRIVILEGE AGAINST DISCLOSURE OF
23 COLLABORATIVE LAW COMMUNICATION. (a) Except as provided by
24 Section 161.114, a collaborative law communication, whether made
25 before or after the institution of a proceeding, is privileged and
26 not subject to disclosure and may not be used as evidence by or
27 against a party or nonparty participant in a proceeding.

1 (b) Any record of a collaborative law communication is
2 privileged, and neither the parties nor the nonparty participants
3 may be required to testify in a proceeding related to or arising out
4 of the collaborative matter or be subject to a process requiring
5 disclosure of privileged information or collaborative law
6 communications.

7 (c) An oral communication or written material used in or
8 made a part of a collaborative law process is admissible or
9 discoverable if it is admissible or discoverable independent of the
10 collaborative law process or obtained outside of the collaborative
11 law process.

12 (d) If this section conflicts with other legal requirements
13 for disclosure of communications, records, or materials, the issue
14 of privilege may be presented to the tribunal having jurisdiction
15 of the proceeding to determine, in camera, whether the facts,
16 circumstances, and context of the communications or materials
17 sought to be disclosed warrant a protective order of the tribunal or
18 whether the communications or materials are subject to
19 disclosure. The presentation of the issue of privilege to a
20 tribunal under this subsection does not constitute a termination of
21 the collaborative law process under Section 161.102(d)(2)(A).

22 (e) A party or nonparty participant may disclose privileged
23 collaborative law communications to a party's successor counsel,
24 subject to the terms of confidentiality in the collaborative law
25 participation agreement. Collaborative law communications
26 disclosed under this subsection remain privileged.

27 (f) A person who makes a disclosure or representation about

1 a collaborative law communication that prejudices the rights of a
2 party or nonparty participant in a proceeding may not assert a
3 privilege under this section. The restriction provided by this
4 subsection applies only to the extent necessary for the person
5 prejudiced to respond to the disclosure or representation.

6 Sec. 161.114. LIMITS OF CONFIDENTIALITY AND PRIVILEGE. (a)

7 The confidentiality prescribed by Section 161.112 or a privilege
8 prescribed by Section 161.113 does not apply to a collaborative law
9 communication that is:

10 (1) in an agreement resulting from the collaborative
11 law process, evidenced in a record signed by all parties;

12 (2) subject to an express waiver of the
13 confidentiality or privilege in a record or orally during a
14 proceeding if the waiver is made by all parties and nonparty
15 participants;

16 (3) available to the public under Chapter 552,
17 Government Code, or made during a session of a collaborative law
18 process that is open, or is required by law to be open, to the
19 public;

20 (4) a threat or statement of a plan to inflict bodily
21 injury or commit a crime of violence;

22 (5) a disclosure of a plan to commit or attempt to
23 commit a crime, or conceal an ongoing crime or ongoing criminal
24 activity;

25 (6) a disclosure of:

26 (A) suspected abuse or neglect of a child to an
27 appropriate agency under Subchapter B, Chapter 261, Family Code, or

1 in a proceeding regarding the abuse or neglect of a child, except
2 that evidence may be excluded in the case of communications between
3 an attorney and client under Subchapter C, Chapter 261, Family
4 Code; or

5 (B) abuse, neglect, or exploitation of an elderly
6 or disabled person to an appropriate agency under Subchapter B,
7 Chapter 48, Human Resources Code; or

8 (7) sought or offered to prove or disprove:

9 (A) a claim or complaint of professional
10 misconduct or malpractice arising from or related to a
11 collaborative law process;

12 (B) an allegation that the settlement agreement
13 was procured by fraud, duress, coercion, or other dishonest means
14 or that terms of the settlement agreement are illegal;

15 (C) the necessity and reasonableness of
16 attorney's fees and related expenses incurred during a
17 collaborative law process or to challenge or defend the
18 enforceability of the collaborative law settlement agreement; or

19 (D) a claim against a third person who did not
20 participate in the collaborative law process.

21 (b) If a collaborative law communication is subject to an
22 exception under Subsection (a), only the part of the communication
23 necessary for the application of the exception may be disclosed or
24 admitted.

25 (c) The disclosure or admission of evidence excepted from
26 confidentiality or privilege under Subsection (a) does not make the
27 evidence or any other collaborative law communication discoverable

1 or admissible for any other purpose.

2 (d) There is no confidentiality under Section 161.112 or
3 privilege under Section 161.113 if a tribunal finds, after a
4 hearing in camera, that the party seeking discovery or the
5 proponent of the evidence has shown the evidence is not otherwise
6 available, the need for the evidence substantially outweighs the
7 interest in protecting confidentiality or privilege, and the
8 collaborative law communication is sought or offered in:

9 (1) a court proceeding involving a felony or
10 misdemeanor; or

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

14 (e) There is no confidentiality under Section 161.112 or
15 privilege under Section 161.113 if the parties agree in advance in a
16 signed record, or if a record of a proceeding reflects agreement by
17 the parties, that all or part of a collaborative law process is not
18 confidential or privileged. This subsection does not apply to a
19 collaborative law communication made by a person who did not
20 receive actual notice of the agreement before the communication was
21 made.

22 Sec. 161.115. AUTHORITY OF TRIBUNAL IN CASE OF
23 NONCOMPLIANCE. (a) Notwithstanding that an agreement fails to
24 meet the requirements of Section 161.101 or that a lawyer has failed
25 to comply with Section 161.111, a tribunal may find that the parties
26 intended to enter into a collaborative law participation agreement
27 if the parties:

1 (1) signed a record indicating an intent to enter into
2 a collaborative law participation agreement; and

3 (2) reasonably believed the parties were
4 participating in a collaborative law process.

5 (b) If a tribunal makes the findings specified in Subsection
6 (a) and determines that the interests of justice require the
7 following action, the tribunal shall:

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

10 (2) apply the disqualification provisions of this
11 chapter; and

12 (3) apply collaborative law confidentiality under
13 Section 161.112 or privilege under Section 161.113.

14 SECTION 2. (a) Except as provided by this section, Chapter
15 161, Civil Practice and Remedies Code, as added by this Act, applies
16 only with respect to a collaborative law participation agreement
17 signed on or after the effective date of this Act.

18 (b) Section 161.115, Civil Practice and Remedies Code, as
19 added by this Act, applies only with respect to a record signed on
20 or after the effective date of this Act.

21 SECTION 3. This Act takes effect September 1, 2015.