

1 HB396  
2 147594-2  
3 By Representative Black  
4 RFD: Judiciary  
5 First Read: 07-MAR-13

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8 SYNOPSIS: This bill would adopt the Alabama Uniform  
9 Collaborative Law Act.

10 This bill would provide a procedure by which  
11 parties to a family law or domestic relations  
12 matter, such as a divorce, custody or visitation  
13 matter, adoption, parentage, or other premarital,  
14 marital, or post-marital agreement, could resolve  
15 the matter through a collaborative law agreement  
16 without intervention by an administrative or  
17 judicial tribunal.

18 This bill would provide requirements for a  
19 collaborative law participation agreement.

20 This bill would provide that the  
21 collaborative law process begins when the parties  
22 sign an agreement.

23 This bill would provide for termination of a  
24 collaborative law agreement.

25 This bill would provide for status reports  
26 regarding the collaborative matter where a  
27 proceeding is pending before a tribunal. This bill

1 would provide circumstances that would disqualify  
2 an attorney or a law firm from representing a party  
3 in a collaborative matter.

4 This bill would provide that a tribunal may  
5 issue an emergency order to protect the health,  
6 safety, welfare, or interest of a party or child of  
7 a party.

8 This bill would provide that certain  
9 communications made during the collaborative  
10 process are confidential.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 To adopt the Alabama Uniform Collaborative Law Act;  
17 to provide for resolution of certain family law matters  
18 through a collaborative law process; to provide requirements  
19 for the process and for attorneys participating in the  
20 resolution of a matter using the collaborative process; to  
21 provide for a collaborative law participation agreement; to  
22 authorize a tribunal to issue emergency orders to protect the  
23 health, safety, welfare, or interest of a party or child of a  
24 party; to provide that certain communications made during the  
25 collaborative process are confidential; and to authorize a  
26 tribunal to make certain rulings regarding a collaborative law  
27 agreement.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. SHORT TITLE. This act may be cited as  
3 the Alabama Uniform Collaborative Law Act.

4 Section 2. DEFINITIONS. In this act:

5 (1) "Collaborative law communication" means a  
6 statement, whether oral or in a record, or verbal or  
7 nonverbal, that:

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

10 (B) occurs after the parties sign a collaborative  
11 law participation agreement and before the collaborative law  
12 process is concluded.

13 (2) "Collaborative law participation agreement"  
14 means an agreement by persons to participate in a  
15 collaborative law process.

16 (3) "Collaborative law process" means a procedure  
17 intended to resolve a collaborative matter without  
18 intervention by a tribunal in which persons:

19 (A) sign a collaborative law participation  
20 agreement; and

21 (B) are represented by collaborative lawyers.

22 (4) "Collaborative lawyer" means a lawyer who  
23 represents a party in a collaborative law process.

24 (5) "Collaborative matter" means a dispute,  
25 transaction, claim, problem, or issue for resolution,  
26 including a dispute, claim, or issue in a proceeding, which is  
27 described in a collaborative law participation agreement and

1 arises under the family or domestic relations law of this  
2 state, including, but not limited to, the following:

3 (A) marriage, divorce, dissolution, annulment, and  
4 property distribution;

5 (B) child custody, visitation, and parenting time;

6 (C) alimony, maintenance, and child support;

7 (D) adoption and other probate court matters  
8 involving families and children;

9 (E) parentage; and

10 (F) premarital, marital, and post-marital  
11 agreements.

12 (6) "Law firm" means a lawyer or lawyers in a  
13 private firm, lawyers employed in the legal department of a  
14 corporation or other organization, and lawyers employed in a  
15 legal services organization.

16 (7) "Nonparty participant" means a person, other  
17 than a party and the party's collaborative lawyer, that  
18 participates in a collaborative law process.

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

22 (9) "Person" means an individual or entity including  
23 those acting in a fiduciary capacity, corporation, business  
24 trust, estate, trust, partnership, limited liability company,  
25 association, joint venture, public corporation, government or  
26 governmental subdivision, agency, or instrumentality, or any  
27 other legal or commercial entity.

1           (10) "Proceeding" means:

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

6           (B) a legislative hearing or similar process.

7           (11) "Prospective party" means a person that  
8 discusses with a prospective collaborative lawyer the  
9 possibility of signing a collaborative law participation  
10 agreement.

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

14           (13) "Related to a collaborative matter" means  
15 involving the same parties, transaction or occurrence, nucleus  
16 of operative fact, dispute, claim, or issue as the  
17 collaborative matter.

18           (14) "Sign" means, with present intent to  
19 authenticate or adopt a record:

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

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

23           (15) "Tribunal" means:

24           (A) a court, arbitrator, administrative agency, or  
25 other body acting in an adjudicative capacity which, after  
26 presentation of evidence or legal argument, has jurisdiction

1 to render a decision affecting a party's interests in a  
2 matter; or

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

5 Section 3. APPLICABILITY. This act applies to a  
6 collaborative law participation agreement that meets the  
7 requirements of Section 4 signed on or after January 1, 2014.

8 Section 4. COLLABORATIVE LAW PARTICIPATION  
9 AGREEMENT; REQUIREMENTS.

10 (a) A collaborative law participation agreement  
11 must:

12 (1) be in a record;

13 (2) be signed by the parties;

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

17 (4) describe the nature and scope of the matter and  
18 the collaborative law process;

19 (5) identify the collaborative lawyer who represents  
20 each party in the process;

21 (6) contain a statement by each collaborative lawyer  
22 confirming the lawyer's representation of a party in the  
23 collaborative law process;

24 (7) contain a provision informing the client that  
25 the collaborative lawyer and his or her law firm must withdraw  
26 from their representation of the client should the  
27 collaborative law process terminate under Section 5(d); and

1           (8) contain a statement explaining the disclosure of  
2 information required under Section 12.

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

6           Section 5. BEGINNING AND CONCLUDING COLLABORATIVE  
7 LAW PROCESS.

8           (a) A collaborative law process begins when the  
9 parties sign a collaborative law participation agreement.

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

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

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

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

19           (3) termination of the process.

20          (d) A collaborative law process terminates:

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

23           (2) when a party:

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

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



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

3           (ii) requests that the proceeding be put on the  
4 tribunal's active calendar; or

5           (iii) takes similar action requiring notice to be  
6 sent to the parties; or

7           (3) except as otherwise provided by subsection (g),  
8 when a party discharges a collaborative lawyer or a  
9 collaborative lawyer withdraws from further representation of  
10 a party.

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

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

16           (g) Notwithstanding the discharge or withdrawal of a  
17 collaborative lawyer, a collaborative law process continues,  
18 if not later than 30 days after the date that the notice of  
19 the discharge or withdrawal of a collaborative lawyer required  
20 by subsection (e) is sent to the parties:

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

23           (2) in a signed record:

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

26           (B) the agreement is amended to identify the  
27 successor collaborative lawyer; and

1 (C) the successor collaborative lawyer confirms the  
2 lawyer's representation of a party in the collaborative  
3 process.

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

8 (i) A collaborative law participation agreement may  
9 provide additional methods of concluding a collaborative law  
10 process.

11 Section 6. PROCEEDINGS PENDING BEFORE TRIBUNAL;  
12 STATUS REPORT.

13 (a) Persons in a proceeding pending before a  
14 tribunal may sign a collaborative law participation agreement  
15 to seek to resolve a collaborative matter related to the  
16 proceeding. The parties shall file promptly with the tribunal  
17 a notice of the agreement after it is signed. Subject to  
18 subsection (c) and Sections 7 and 8, the filing operates as an  
19 application for a stay of the proceeding.

20 (b) The parties shall file promptly with the  
21 tribunal notice in a record when a collaborative law process  
22 concludes by agreement of the parties or by either party if  
23 the process is terminated. The stay of the proceeding under  
24 subsection (a) is lifted when the notice is filed. The notice  
25 may not specify any reason for termination of the process.

26 (c) A tribunal in which a proceeding is stayed under  
27 subsection (a) may require the parties and collaborative

1 lawyers to provide a status report on the collaborative law  
2 process and the proceeding. A status report may include only  
3 information on whether the process is ongoing or concluded.  
4 It may not include a report, assessment, evaluation,  
5 recommendation, finding, or other communication regarding a  
6 collaborative law process or collaborative law matter.

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

9 (e) A tribunal shall provide parties notice and an  
10 opportunity to be heard before dismissing a proceeding in  
11 which a notice of collaborative process is filed based on  
12 delay or failure to prosecute.

13 Section 7. EMERGENCY ORDER. During a collaborative  
14 law process, a tribunal may issue emergency orders to protect  
15 the health, safety, welfare, or interest of a party or a child  
16 of either party.

17 Section 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A  
18 tribunal may approve an agreement resulting from a  
19 collaborative law process.

20 Section 9. DISQUALIFICATION OF COLLABORATIVE LAWYER  
21 AND LAWYERS IN ASSOCIATED LAW FIRM.

22 (a) Except as otherwise provided in subsection (c),  
23 a collaborative lawyer is disqualified from appearing before a  
24 tribunal to represent a party in a proceeding related to the  
25 collaborative matter. This disqualification is not subject to  
26 waiver by the parties.

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

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

10 (1) to ask a tribunal to approve an agreement  
11 resulting from the collaborative law process and prepare and  
12 file all documents necessary to obtain a final order; or

13 (2) to seek or defend an emergency order to protect  
14 the health, safety, welfare, or interest of a party, or the  
15 party's child including, but not limited to, a proceeding  
16 filed under the Protection from Abuse Act, Chapter 5 of Title  
17 31, Code of Alabama 1975, if a successor lawyer is not  
18 immediately available to represent that person.

19 (d) If subsection (c)(2) applies, a collaborative  
20 lawyer, or lawyer in a law firm with which the collaborative  
21 lawyer is associated, may represent a party or the party's  
22 child only until the person is represented by a successor  
23 lawyer or reasonable measures are taken to protect the health,  
24 safety, welfare, or interest of the person.

25 Section 10. LOW INCOME PARTIES. [RESERVED]

26 Section 11. GOVERNMENTAL ENTITY AS PARTY. [RESERVED]

27 Section 12. DISCLOSURE OF INFORMATION.

1           (a) Except as provided by law other than this act,  
2 during the collaborative law process, a party shall make  
3 timely, full, candid, and informal disclosure of information  
4 related to the collaborative matter without formal discovery.  
5 A party also shall update promptly previously disclosed  
6 information that has materially changed.

7           (b) The parties may define the scope of disclosure  
8 under subsection (a) during the collaborative law process.

9           Section 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY  
10 AND MANDATORY REPORTING NOT AFFECTED.

11           This act does not affect:

12           (1) the professional responsibility obligations and  
13 standards applicable to a lawyer or other licensed  
14 professional; or

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

18           Section 14. APPROPRIATENESS OF COLLABORATIVE LAW  
19 PROCESS. Before a prospective party signs a collaborative law  
20 participation agreement, a prospective collaborative lawyer  
21 shall:

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

25           (2) provide the prospective party with information  
26 that the lawyer reasonably believes is sufficient for the  
27 party to make an informed decision about the material benefits

1 and risks of a collaborative law process as compared to the  
2 material benefits and risks of other reasonably available  
3 alternatives for resolving the proposed collaborative matter;  
4 and

5 (3) advise the prospective party that:

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

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

14 (C) the collaborative lawyer and any lawyer in a law  
15 firm with which the collaborative lawyer is associated may not  
16 appear before a tribunal to represent a party in a proceeding  
17 related to the collaborative matter, except as authorized by  
18 Section 9(c).

19 Section 15. COERCIVE OR VIOLENT RELATIONSHIP.

20 (a) Before a prospective party signs a collaborative  
21 law participation agreement, a prospective collaborative  
22 lawyer shall make reasonable inquiry whether the prospective  
23 party has a history of a coercive or violent relationship with  
24 another prospective party.

25 (b) Throughout a collaborative law process, a  
26 collaborative lawyer reasonably and continuously shall assess  
27 whether the party the collaborative lawyer represents has a

1 history of a coercive or violent relationship with another  
2 party.

3 (c) If a collaborative lawyer reasonably believes  
4 that the party the lawyer represents or the prospective party  
5 who consults the lawyer has a history of a coercive or violent  
6 relationship with another party or prospective party, the  
7 lawyer may not begin or continue a collaborative law process  
8 unless:

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

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

14 Section 16. CONFIDENTIALITY OF COLLABORATIVE LAW  
15 COMMUNICATION. A collaborative law communication is  
16 confidential except to the extent agreed by the parties in a  
17 signed record or as provided by law of this state other than  
18 this act.

19 Section 17. PRIVILEGE AGAINST DISCLOSURE FOR  
20 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.  
21 [RESERVED]

22 Section 18. WAIVER AND PRECLUSION OF PRIVILEGE.  
23 [RESERVED]

24 Section 19. LIMITS OF PRIVILEGE. [RESERVED]

25 Section 20. AUTHORITY OF TRIBUNAL IN CASE OF  
26 NONCOMPLIANCE.

1           (a) If an agreement fails to meet the requirements  
2 of Section 4, or a lawyer fails to comply with Section 14 or  
3 15, a tribunal may nonetheless find that the parties intended  
4 to enter into a collaborative law participation agreement if  
5 they:

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

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

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

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

15          (2) apply the disqualification provisions of  
16 Sections 5, 6, and 9; and

17          (3) apply any privilege under law.

18          Section 21. UNIFORMITY OF APPLICATION AND  
19 CONSTRUCTION. In applying and construing this uniform act,  
20 consideration must be given to the need to promote uniformity  
21 of the law with respect to its subject matter among states  
22 that enact it.

23          Section 22. RELATION TO ELECTRONIC SIGNATURES IN  
24 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits,  
25 and supersedes the federal Electronic Signatures in Global and  
26 National Commerce Act, 15 U.S.C. Section 7001, et seq., but  
27 does not modify, limit, or supersede Section 101(c) of that



1       act, 15 U.S.C Section 7001(c), or authorize electronic  
2       delivery of any of the notices described in Section 103(b) of  
3       that act, 15 U.S.C. Section 7003(b).

4               Section 23. SEVERABILITY. If any provision of this  
5       act or its application to any person or circumstance is held  
6       invalid, the invalidity does not affect other provisions or  
7       applications of this act which can be given effect without the  
8       invalid provision or application, and to this end the  
9       provisions of this act are severable.

10              Section 24. EFFECTIVE DATE. This act takes effect  
11       January 1, 2014.