

SUBJECT: Adopting the Collaborative Family Law Act

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Madden, Raymond, Scott, Woolley

0 nays

2 absent — Hartnett, Thompson

WITNESSES: For — Angeline Bain; Gay Cox; Kevin Fuller; Julian Schwartz

Against — None

DIGEST: CSHB 3833 would add the Collaborative Family Law Act to the Family Code.

Requirements for agreement. A collaborative family law participation agreement would be required to:

- be in a record;
- be signed by the parties;
- state the parties' intent to resolve a collaborative family law matter through a collaborative family law process;
- describe the nature and scope of the collaborative family law matter;
- identify the collaborative lawyer who would represent each party in the collaborative family law process; and
- contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative family law process.

The agreement would have to include provisions for suspending tribunal intervention while the parties were using the collaborative family law process and provisions for jointly engaging professionals, experts, or advisors serving in a neutral capacity.

Beginning and concluding the process. A collaborative family law process would begin when the parties signed a collaborative family law participation agreement. A tribunal could not order a party to participate in a collaborative family law process over that party's objection.

The process would be concluded by:

- resolution as evidenced by a signed record;
- resolution of part of a collaborative family law matter, evidenced by a signed record, in which the parties agreed that the remaining parts of the matter would not be resolved in the process; or
- termination of the process.

The process would terminate:

- when a party notified other parties that the process was ended;
- when a party
 - began a proceeding related to a collaborative family law matter without the agreement of all parties; or
 - in a pending proceeding related to the matter, without the agreement of all parties, initiated a pleading, motion, or request for a conference with the tribunal; initiated an order to show cause or requested that the proceeding be put on the tribunal's active calendar; or took similar action requiring notice to be sent to the parties; or
- when a party discharged a collaborative lawyer or a collaborative lawyer withdrew.

The process could continue if a lawyer was discharged or withdrew if, within 30 days after notifying the parties of the lawyer's discharge or withdrawal, the unrepresented party engaged a successor lawyer and the parties consented to continue the process by reaffirming the agreement and identifying the successor lawyer in the agreement.

Proceedings pending before tribunal. The parties to a proceeding pending before a tribunal could sign a collaborative family law participation agreement to seek to resolve a collaborative family law matter related to the proceeding. The parties would be required to promptly file with the tribunal a notice of the agreement. The filing would operate as a stay of the proceeding.

A tribunal that was notified by the 30th day before a proceeding could not, until a party notified the tribunal that the process did not result in a settlement, set a proceeding or hearing, impose discovery deadlines, require compliance with scheduling orders, or dismiss the proceeding.

The parties would be required to notify the tribunal if settlement was reached. If settlement was not reached, the parties would be required to file a status report:

- by the 180th day after the collaborative family law participation agreement was signed or, if the proceeding was filed after the agreement was signed, by the 180th day after the proceeding was filed; and
- within one year after the collaborative family law participation agreement was signed or, if the proceeding was filed after the agreement was signed, within one year after the proceeding was filed, accompanied by a motion for continuance.

The tribunal would be required to grant a motion for continuance if the status report indicated that the parties desired to continue to use the collaborative family law process.

If settlement was not reached within two years after the proceeding was filed, the tribunal could set the proceeding for trial on the regular docket or dismiss the proceeding without prejudice.

Emergency order. During a collaborative family law process, a tribunal could issue an emergency order to protect the health, safety, welfare or interest of a party or a family. If the emergency order was granted without the agreement of all parties, the granting of the order would terminate the collaborative process.

Written settlement agreement. A party would be entitled to judgment on a collaborate family law settlement agreement if the agreement:

- provided, in a prominently displayed statement, that the agreement was not subject to revocation; and
- was signed by each party to the agreement and the collaborative lawyer of each party.

Lawyer disqualification. A collaborative lawyer and the lawyer's firm would be disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter.

A collaborative lawyer or the lawyer's firm could represent a party:

- to request a tribunal to approve an agreement resulting from the collaborative family law process; or
- to seek or defend an emergency order if a successor lawyer was not immediately available.

An exception from disqualification would apply for low-income parties. After a collaborative family law process concluded, another lawyer in the firm could represent a party pro bono if:

- the party had an annual income that qualified the party for free legal representation under the firm's policy;
- the collaborative family law participation agreement authorized the representation; and
- the collaborative lawyer was isolated from participation in the collaborative family law matter or a related matter.

A similar disqualification exception would apply for a governmental entity.

Disclosure of information. Except as required under other law, during the collaborative family law process, on the request of another party, a party would be required to make timely, full, candid, and informal disclosure of information without formal discovery. A party would be required to promptly update previously disclosed information that materially changed.

The parties could define the scope of the disclosure during the collaborative family law process.

Informed consent. Before a prospective party signed a collaborative family law participation agreement, a prospective collaborative lawyer would be required to:

- assess with the prospective party factors the lawyer reasonably believed related to whether a collaborative process was appropriate;

- provide the prospective party with information that the lawyer reasonably believed was sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative family law process as compared to alternatives; and
- advise the prospective party that:
 - after signing an agreement, if a party initiated a proceeding or sought tribunal intervention in a pending proceeding related to the collaborative family law matter, the collaborative family law process would terminate;
 - participation in a collaborative family law process would be voluntary and any party would have the right to terminate the process unilaterally; and
 - the collaborative lawyer and the lawyer's firm could not appear before a tribunal to represent a party in a proceeding related to the collaborative family law matter, unless an exception applied.

Family violence. A prospective collaborative lawyer would be required to make reasonable inquiry into whether the prospective party had a history of family violence with the other prospective party, if the two were members of the same family or household or had a dating relationship. If the lawyer reasonably believed there was a history of family violence, the lawyer could not begin or continue a collaborative family law process unless:

- the party or prospective party requested beginning or continuing a process; and
- the lawyer determined with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence.

Confidentiality of communication. A collaborative family law communication would be confidential to the extent agreed to by the parties in a signed record or as provided by other law.

Privilege. A collaborative family law communication, whether made before or after the institution of a proceeding, would be privileged, would not be subject to disclosure, and could not be used as evidence against a party or nonparty participant in a proceeding. An oral communication or written material used in or made a part of a collaborative family law

process would be admissible or discoverable if it was admissible or discoverable independent of the collaborative family law process.

A collaborative family law communication would not be privileged if it was:

- in an agreement resulting from the collaborative family law process, evidenced in a record signed by all parties to the agreement;
- subject to an express waiver of the privilege if made by all parties and nonparty participants;
- available to the public under open government laws, or made during a session of a collaborative family law process that was open to the public;
- a threat of violence;
- a disclosure of a plan to commit a crime;
- a disclosure in a report of:
 - suspected abuse or neglect of a child; or
 - abuse, neglect, or exploitation of an elderly or disabled person; or
- sought or offered to prove or disprove
 - a malpractice claim;
 - an allegation that the settlement agreement was procured by fraud, duress, coercion, or other dishonest means or that terms of the settlement were illegal;
 - the necessity and reasonableness of attorney's fees or to challenge or defend the enforceability of the settlement agreement; or
 - a claim against a third person who did not participate in the collaborative family law process.

Authority of tribunal in case of noncompliance. A tribunal could find that the parties intended to enter into a collaborative family law participation agreement if the parties signed a record indicating an intent to enter into an agreement and reasonably believed they were participating in a collaborative family law process. If appropriate, the tribunal could enforce an agreement evidenced by a record resulting from the process in which the parties participated.

Effective date. The bill would take effect September 1, 2011, and would apply to a collaborative family law participation agreement signed on or after the effective date.