

HOUSE BILL NO. 272

INTRODUCED BY E. HILL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE UNIFORM COLLABORATIVE LAW ACT;
5 PROVIDING DEFINITIONS AND REQUIREMENTS FOR PARTICIPATION IN THE COLLABORATIVE LAW
6 PROCESS; PROVIDING A DESCRIPTION OF THE COLLABORATIVE LAW AGREEMENT; REQUIRING
7 NOTIFICATION OF A COURT WHEN ENTERING THE COLLABORATIVE LAW PROCESS; REQUIRING FULL
8 DISCLOSURE OF INFORMATION TO THE OPPOSING PARTY; REQUIRING A COLLABORATIVE LAWYER
9 TO MAKE REASONABLE INQUIRY INTO WHETHER THE PARTIES HAVE A HISTORY OF A VIOLENT
10 RELATIONSHIP; PROVIDING PRIVILEGES AGAINST DISCLOSURE FOR COLLABORATIVE LAW
11 COMMUNICATIONS; AND PROVIDING AUTHORITY FOR A COURT TO ENFORCE A COLLABORATIVE LAW
12 AGREEMENT IN THE CASE OF NONCOMPLIANCE."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 21] may be cited as the "Uniform
17 Collaborative Law Act".

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19 NEW SECTION. **Section 2. Definitions.** (1) "Collaborative law communication" means a statement,
20 whether oral or in a record, or verbal or nonverbal, that:

- 21 (a) is made to conduct, participate in, continue, or reconvene a collaborative law process; and
- 22 (b) occurs after the parties sign a collaborative law participation agreement and before the collaborative
23 law process is concluded.

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

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

- 28 (a) sign a collaborative law participation agreement; and
- 29 (b) are represented by collaborative lawyers.

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

1 (5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including
2 a dispute, claim, or issue in a proceeding, that is described in a collaborative law participation agreement.

3 (6) "Law firm" means:

4 (a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship,
5 limited liability company, or association; and

6 (b) lawyers employed in a legal services organization, or the legal department of a corporation or other
7 organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

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

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

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

15 (10) "Proceeding" means:

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

18 (b) a legislative hearing or similar process.

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

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

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

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

26 (a) to execute or adopt a tangible symbol; or

27 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

28 (15) "Tribunal" means:

29 (a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after
30 presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in

1 a matter; or

2 (b) a legislative body conducting a hearing or similar process.

3

4 **NEW SECTION. Section 3. Collaborative law participation agreement -- requirements.** (1) A
5 collaborative law participation agreement must:

6 (a) be in a record;

7 (b) be signed by the parties;

8 (c) state the parties' intention to resolve a collaborative matter through a collaborative law process under
9 [sections 1 through 21];

10 (d) describe the nature and scope of the matter;

11 (e) identify the collaborative lawyer who represents each party in the process; and

12 (f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in
13 the collaborative law process.

14 (2) Parties may agree to include in a collaborative law participation agreement additional provisions not
15 inconsistent with [sections 1 through 21].

16

17 **NEW SECTION. Section 4. Beginning and concluding collaborative law process.** (1) A collaborative
18 law process begins when the parties sign a collaborative law participation agreement.

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

21 (3) A collaborative law process is concluded by a:

22 (a) resolution of a collaborative matter as evidenced by a signed record;

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

25 (c) termination of the process.

26 (4) A collaborative law process terminates:

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

28 (b) when a party:

29 (i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

30 (ii) in a pending proceeding related to the matter:

- 1 (A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;
- 2 (B) requests that the proceeding be scheduled for trial; or
- 3 (C) takes a similar action requiring notice to be sent to the parties; or
- 4 (c) except as otherwise provided by subsection (7), when a party discharges a collaborative lawyer or
- 5 a collaborative lawyer withdraws from further representation of a party.
- 6 (5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge
- 7 or withdrawal.
- 8 (6) A party may terminate a collaborative law process with or without cause.
- 9 (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process
- 10 continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative
- 11 lawyer required by subsection (5) is sent to the parties:
- 12 (a) the unrepresented party engages a successor collaborative lawyer; and
- 13 (b) in a signed record:
- 14 (i) the parties consent to continue the process by reaffirming the collaborative law participation
- 15 agreement;
- 16 (ii) the agreement is amended to identify the successor collaborative lawyer; and
- 17 (iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative
- 18 process.
- 19 (8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a
- 20 tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.
- 21 (9) A collaborative law participation agreement may provide additional methods of concluding a
- 22 collaborative law process.

23

24 **NEW SECTION. Section 5. Proceedings pending before tribunal -- status report.** (1) Persons in

25 a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve

26 a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the

27 agreement after it is signed. Subject to subsection (3) and [sections 6 and 7], the filing operates as an application

28 for a stay of the proceeding.

29 (2) The parties shall file promptly with the tribunal notice in a record when a collaborative law process

30 concludes. The stay of the proceeding under subsection (1) is lifted when the notice is filed. The notice may not

1 specify any reason for termination of the process.

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

7 (4) A tribunal may not consider a communication made in violation of subsection (3).

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

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11 **NEW SECTION. Section 6. Emergency order.** During a collaborative law process, a tribunal may issue
12 emergency orders to protect the health, safety, welfare, or interest of a party.

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14 **NEW SECTION. Section 7. Approval of agreement by tribunal.** A tribunal may approve an agreement
15 resulting from a collaborative law process.

16
17 **NEW SECTION. Section 8. Disqualification of collaborative lawyer and lawyers in associated law**
18 **firm.** (1) Except as provided in subsection (3), a collaborative lawyer is disqualified from appearing before a
19 tribunal to represent a party in a proceeding related to the collaborative matter.

20 (2) Except as provided in subsection (3) and [sections 9 and 10], a lawyer in a law firm with which the
21 collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a
22 proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under
23 subsection (1).

24 (3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may
25 represent a party:

26 (a) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

27 (b) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or
28 household member if a successor lawyer is not immediately available to represent that person.

29 (4) If subsection (3)(b) applies, a collaborative lawyer or a lawyer in a law firm with which the
30 collaborative lawyer is associated may represent a party or household member only until the person is

1 represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or
2 interest of the person.

3
4 **NEW SECTION. Section 9. Low-income parties.** (1) The disqualification provision contained in
5 [section 8(1)] applies to a collaborative lawyer representing a party with or without a fee.

6 (2) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative
7 lawyer disqualified under [section 8(1)] is associated may represent a party without a fee in the collaborative
8 matter or a matter related to the collaborative matter if:

9 (a) the party has an annual income that qualifies the party for free legal representation under the criteria
10 established by the law firm for free legal representation;

11 (b) the collaborative law participation agreement so provides; and

12 (c) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter
13 related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate
14 the collaborative lawyer from such participation.

15
16 **NEW SECTION. Section 10. Governmental entity as party.** (1) The disqualification provision
17 contained in [section 8(1)] applies to a collaborative lawyer representing a party that is a government or
18 governmental subdivision, agency, or instrumentality.

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

22 (a) the collaborative law participation agreement so provides; and

23 (b) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter
24 related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate
25 the collaborative lawyer from such participation.

26
27 **NEW SECTION. Section 11. Disclosure of information.** Except as provided by law, during the
28 collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal
29 disclosure of information related to the collaborative matter without formal discovery. A party also shall promptly
30 update previously disclosed information that has materially changed. The parties may define the scope of

1 disclosure during the collaborative law process.

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3 **NEW SECTION. Section 12. Standards of professional responsibility and mandatory reporting**

4 **not affected.** [Sections 1 through 21] do not affect:

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

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

9

10 **NEW SECTION. Section 13. Appropriateness of collaborative law process.** Before a prospective
11 party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

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

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

18 (3) advise the prospective party that:

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

21 (b) participation in a collaborative law process is voluntary and any party has the right to terminate
22 unilaterally a collaborative law process with or without cause; and

23 (c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated
24 may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except
25 as authorized by [section 8(3), 9(2), or 10(2)].

26

27 **NEW SECTION. Section 14. Coercive or violent relationship.** (1) Before a prospective party signs
28 a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry
29 whether the prospective party has a history of a coercive or violent relationship with another prospective party.

30 (2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall

1 assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship
2 with another party.

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

6 (a) the party or the prospective party requests beginning or continuing a process; and

7 (b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be
8 protected adequately during a process.

9

10 **NEW SECTION. Section 15. Confidentiality of collaborative law communication.** A collaborative
11 law communication is confidential to the extent agreed by the parties in a signed record or as provided by law.

12

13 **NEW SECTION. Section 16. Privilege against disclosure for collaborative law communication --**
14 **admissibility -- discovery.** (1) Subject to [sections 17 and 18], a collaborative law communication is privileged
15 under subsection (2), is not subject to discovery, and is not admissible in evidence.

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

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

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

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

23

24 **NEW SECTION. Section 17. Waiver and preclusion of privilege.** (1) A privilege under [section 16]
25 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case
26 of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

27 (2) A person that makes a disclosure or representation about a collaborative law communication that
28 prejudices another person in a proceeding may not assert a privilege under [section 16], but this preclusion
29 applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

30

1 **NEW SECTION. Section 18. Limits of privilege.** (1) There is no privilege under [section 16] for a
2 collaborative law communication that is:

3 (a) available to the public or made during a session of a collaborative law process that is open or is
4 required by law to be open to the public;

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

6 (c) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime
7 or ongoing criminal activity; or

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

10 (2) The privileges under [section 16] for a collaborative law communication do not apply to the extent
11 that a communication is:

12 (a) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice
13 arising from or related to a collaborative law process; or

14 (b) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult
15 unless the department of public health and human services is a party to or otherwise participates in the process.

16 (3) There is no privilege under [section 16] if a tribunal finds, after a hearing in camera, that the party
17 seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need
18 for the evidence substantially outweighs the interest of protecting confidentiality, and the collaborative law
19 communication is sought or offered in:

20 (a) a court proceeding involving a felony or misdemeanor; or

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

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

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

28 (6) The privileges under [section 16] do not apply if the parties agree in advance in a signed record, or
29 if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not
30 privileged. This subsection does not apply to a collaborative law communication made by a person that did not

1 receive actual notice of the agreement before the communication was made.

2

3 **NEW SECTION. Section 19. Authority of tribunal in case of noncompliance.** (1) If an agreement
4 fails to meet the requirements of [section 3] or a lawyer fails to comply with [section 14 or 15], a tribunal may still
5 find that the parties intended to enter into a collaborative law participation agreement if they:

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

7 (b) reasonably believed they were participating in a collaborative law process.

8 (2) If a tribunal makes the findings specified in subsection (1) and the interests of justice require, the
9 tribunal may:

10 (a) enforce an agreement evidenced by a record resulting from the process in which the parties
11 participated;

12 (b) apply the disqualification provisions of [sections 4, 5, 8, 9, and 10]; and

13 (c) apply a privilege under [section 16].

14

15 **NEW SECTION. Section 20. Uniformity of application and construction.** In applying and construing
16 this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its
17 subject matter among states that enact it.

18

19 **NEW SECTION. Section 21. Relation to electronic signatures in global commerce act.** [Sections
20 1 through 21] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce
21 Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c),
22 or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

23

24 **NEW SECTION. Section 22. Codification instruction.** [Sections 1 through 21] are intended to be
25 codified as an integral part of Title 25, and the provisions of Title 25 apply to [sections 1 through 21].

26

27 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
29 the part remains in effect in all valid applications that are severable from the invalid applications.

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- END -