

1 SB18  
2 125378-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 01-MAR-11  
6 PFD: 01/19/2011

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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 for the resolution  
21 of certain collaborative matters related to a  
22 family law proceeding pending before an  
23 administrative or judicial tribunal.

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

1 an attorney or a law firm from representing a party  
2 in a collaborative matter.

3 This bill would provide that certain  
4 communications made during the collaborative  
5 process are privileged and are not subject to  
6 discovery or admissible as evidence.

7  
8 A BILL  
9 TO BE ENTITLED  
10 AN ACT

11  
12 To adopt the Alabama Uniform Collaborative Law Act;  
13 to provide for resolution of certain family law matters  
14 through a collaborative law process; to provide requirements  
15 for the process and for attorneys participating in the  
16 resolution of a matter using the collaborative process; to  
17 provide for a collaborative law participation agreement; to  
18 provide requirements for the collaborative process; to  
19 authorize a tribunal to issue emergency orders involving a  
20 matter that is being resolved through the collaborative  
21 process; to provide that certain communications made during  
22 the collaborative process are privileged and not subject to  
23 discovery or admissible as evidence; to provide for waiver of  
24 a signature; and to authorize a tribunal to make certain  
25 rulings regarding a collaborative law agreement.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3           Section 2. DEFINITIONS. In this act:

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

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

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

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

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

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

20           (B) are represented by collaborative lawyers.

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

23           (5) "Collaborative matter" means a dispute,  
24 transaction, claim, problem, or issue for resolution described  
25 in a collaborative law participation agreement. The term  
26 includes 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:

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;

8 (E) parentage; and

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

11 (6) "Law firm" means:

12 (A) lawyers who practice law together in a  
13 partnership, professional corporation, sole proprietorship,  
14 limited liability company, or association; and

15 (B) lawyers employed in a legal services  
16 organization, or the legal department of a corporation or  
17 other organization, or the legal department of a government or  
18 governmental subdivision, agency, or instrumentality.

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

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

25 (9) "Person" means an individual, corporation,  
26 business trust, estate, trust, partnership, limited liability  
27 company, association, joint venture, public corporation,

1 government or governmental subdivision, agency, or  
2 instrumentality, or any other legal or commercial entity.

3 (10) "Proceeding" means:

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

8 (B) a legislative hearing or similar process.

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

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

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

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

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

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

25 (15) "Tribunal" means

26 (A) a court, arbitrator, administrative agency, or  
27 other body acting in an adjudicative capacity which, after

1 presentation of evidence or legal argument, has jurisdiction  
2 to render a decision affecting a party's interests in a  
3 matter; or

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

6 Section 3. APPLICABILITY. This act applies to a  
7 collaborative law participation agreement that meets the  
8 requirements of Section 4 signed on or after the effective  
9 date of this act.

10 Section 4. COLLABORATIVE LAW PARTICIPATION  
11 AGREEMENT; REQUIREMENTS.

12 (a) A collaborative law participation agreement  
13 must:

14 (1) be in a record;

15 (2) be signed by the parties;

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

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

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

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

25 (b) Parties may agree to include in a collaborative  
26 law participation agreement additional provisions not  
27 inconsistent with this act.

1                   Section 5. BEGINNING AND CONCLUDING COLLABORATIVE  
2 LAW PROCESS.

3                   (a) A collaborative law process begins when the  
4 parties sign a collaborative law participation agreement

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

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

8                   (1) resolution of a collaborative matter as  
9 evidenced by a signed record;

10                  (2) resolution of a part of the collaborative  
11 matter, evidenced by a signed record, in which the parties  
12 agree that the remaining parts of the matter will not be  
13 resolved in the process; or

14                  (3) termination of the process.

15                  (d) A collaborative law process terminates:

16                  (1) when a party gives notice to other parties in a  
17 record that the process is ended; or

18                  (2) when a party:

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

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

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

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

26                   (iii) takes similar action requiring notice to be  
27 sent to the parties; or



1           (3) except as otherwise provided by subsection (g),  
2 when a party discharges a collaborative lawyer or a  
3 collaborative lawyer withdraws from further representation of  
4 a party.

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

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

10           (g) Notwithstanding the discharge or withdrawal of a  
11 collaborative lawyer, a collaborative law process continues,  
12 if not later than 30 days after the date that the notice of  
13 the discharge or withdrawal of a collaborative lawyer required  
14 by subsection (e) is sent to the parties:

15           (1) the unrepresented party engages a successor  
16 collaborative lawyer; and

17           (2) in a signed record:

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

20           (B) the agreement is amended to identify the  
21 successor collaborative lawyer; and

22           (C) the successor collaborative lawyer confirms the  
23 lawyer's representation of a party in the collaborative  
24 process.

25           (h) A collaborative law process does not conclude  
26 if, with the consent of the parties, a party requests a

1 tribunal to approve a resolution of the collaborative matter  
2 or any part thereof as evidenced by a signed record.

3 (i) A collaborative law participation agreement may  
4 provide additional methods of concluding a collaborative law  
5 process.

6 Section 6. PROCEEDINGS PENDING BEFORE TRIBUNAL;  
7 STATUS REPORT.

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

15 (b) Parties shall file promptly with the tribunal  
16 notice in a record when a collaborative law process concludes.  
17 The stay of the proceeding under subsection (a) is lifted when  
18 the notice is filed. The notice may not specify any reason for  
19 termination of the process.

20 (c) A tribunal in which a proceeding is stayed under  
21 subsection (a) may require parties and collaborative lawyers  
22 to provide a status report on the collaborative law process  
23 and the proceeding. A status report may include only  
24 information on whether the process is ongoing or concluded. It  
25 may not include a report, assessment, evaluation,  
26 recommendation, finding, or other communication regarding a  
27 collaborative law process or collaborative law matter.

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

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

7 Section 7. EMERGENCY ORDER. During a collaborative  
8 law process, a tribunal may issue emergency orders to protect  
9 the health, safety, welfare, or interest of a party or  
10 plaintiff as defined in Chapter 5 of Title 30, Code of Alabama  
11 1975.

12 Section 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A  
13 tribunal may approve an agreement resulting from a  
14 collaborative law process.

15 Section 9. DISQUALIFICATION OF COLLABORATIVE LAWYER  
16 AND LAWYERS IN ASSOCIATED LAW FIRM.

17 (a) Except as otherwise provided in subsection (c),  
18 a collaborative lawyer is disqualified from appearing before a  
19 tribunal to represent a party in a proceeding related to the  
20 collaborative matter.

21 (b) Except as otherwise provided in subsection (c)  
22 and Sections 10 and 11, a lawyer in a law firm with which the  
23 collaborative lawyer is associated is disqualified from  
24 appearing before a tribunal to represent a party in a  
25 proceeding related to the collaborative matter if the  
26 collaborative lawyer is disqualified from doing so under  
27 subsection (a).

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

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

6 (2) to seek or defend an emergency order to protect  
7 the health, safety, welfare, or interest of a plaintiff as  
8 defined in Section 30-5-2, Code of Alabama 1975, if a  
9 successor lawyer is not immediately available to represent  
10 that person.

11 (d) If subsection (c) (2) applies, a collaborative  
12 lawyer, or lawyer in a law firm with which the collaborative  
13 lawyer is associated, may represent a plaintiff as defined in  
14 Section 30-5-2, Code of Alabama 1975, only until the person is  
15 represented by a successor lawyer or reasonable measures are  
16 taken to protect the health, safety, welfare, or interest of  
17 the person.

18 Section 10. LOW INCOME PARTIES.

19 (a) The disqualification of Section 9(a) applies to  
20 a collaborative lawyer representing a party with or without  
21 fee.

22 (b) After a collaborative law process concludes,  
23 another lawyer in a law firm with which a collaborative lawyer  
24 disqualified under Section 9(a) is associated may represent a  
25 party without fee in the collaborative matter or a matter  
26 related to the collaborative matter if:

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

4           (2) the collaborative law participation agreement so  
5 provides; and

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

11           Section 11. GOVERNMENTAL ENTITY AS PARTY.

12           (a) The disqualification of Section 9(a) applies to  
13 a collaborative lawyer representing a party that is a  
14 government or governmental subdivision, agency, or  
15 instrumentality.

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

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

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

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

3 Section 12. DISCLOSURE OF INFORMATION. Except as  
4 provided by law other than this act, during the collaborative  
5 law process, on the request of another party, a party shall  
6 make timely, full, candid, and informal disclosure of  
7 information related to the collaborative matter without formal  
8 discovery. A party also shall update promptly previously  
9 disclosed information that has materially changed. Parties may  
10 define the scope of disclosure during the collaborative law  
11 process.

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

14 This act does not affect:

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

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

21 Section 14. APPROPRIATENESS OF COLLABORATIVE LAW  
22 PROCESS.

23 Before a prospective party signs a collaborative law  
24 participation agreement, a prospective collaborative lawyer  
25 shall:

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

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

12           (3) advise the prospective party that:

13           (A) after signing an agreement if a party initiates  
14 a proceeding or seeks tribunal intervention in a pending  
15 proceeding related to the collaborative matter, the  
16 collaborative law process terminates;

17           (B) participation in a collaborative law process is  
18 voluntary and any party has the right to terminate  
19 unilaterally a collaborative law process with or without  
20 cause; and

21           (C) the collaborative lawyer and any lawyer in a law  
22 firm with which the collaborative lawyer is associated may not  
23 appear before a tribunal to represent a party in a proceeding  
24 related to the collaborative matter, except as authorized by  
25 Section 9(c), 10(b), or 11(b).

26           Section 15. COERCIVE OR VIOLENT RELATIONSHIP.

1 (a) Before a prospective party signs a collaborative  
2 law participation agreement, a prospective collaborative  
3 lawyer must make reasonable inquiry whether the prospective  
4 party has a history of a coercive or violent relationship with  
5 another prospective party.

6 (b) Throughout a collaborative law process, a  
7 collaborative lawyer reasonably and continuously shall assess  
8 whether the party the collaborative lawyer represents has a  
9 history of a coercive or violent relationship with another  
10 party.

11 (c) If a collaborative lawyer reasonably believes  
12 that the party the lawyer represents or the prospective party  
13 who consults the lawyer has a history of a coercive or violent  
14 relationship with another party or prospective party, the  
15 lawyer may not begin or continue a collaborative law process  
16 unless:

17 (1) the party or the prospective party requests  
18 beginning or continuing a process; and

19 (2) the collaborative lawyer reasonably believes  
20 that the safety of the party or prospective party can be  
21 protected adequately during a process.

22 Section 16. CONFIDENTIALITY OF COLLABORATIVE LAW  
23 COMMUNICATION. A collaborative law communication is  
24 confidential to the extent agreed by the parties in a signed  
25 record or as provided by law of this state other than this  
26 act.



1                   Section 17. PRIVILEGE AGAINST DISCLOSURE FOR  
2 COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.

3                   (a) Subject to Sections 18 and 19, a collaborative  
4 law communication is privileged under subsection (b), is not  
5 subject to discovery, and is not admissible in evidence.

6                   (b) In a proceeding, the following privileges apply:

7                   (1) A party may refuse to disclose, and may prevent  
8 any other person from disclosing, a collaborative law  
9 communication.

10                  (2) A nonparty participant may refuse to disclose,  
11 and may prevent any other person from disclosing, a  
12 collaborative law communication of the nonparty participant.

13                  (c) Evidence or information that is otherwise  
14 admissible or subject to discovery does not become  
15 inadmissible or protected from discovery solely because of its  
16 disclosure or use in a collaborative law process.

17                   Section 18. WAIVER AND PRECLUSION OF PRIVILEGE.

18                  (a) A privilege under Section 17 may be waived in a  
19 record or orally during a proceeding if it is expressly waived  
20 by all parties and, in the case of the privilege of a nonparty  
21 participant, it is also expressly waived by the nonparty  
22 participant.

23                  (b) A person that makes a disclosure or  
24 representation about a collaborative law communication which  
25 prejudices another person in a proceeding may not assert a  
26 privilege under Section 17, but this preclusion applies only

1 to the extent necessary for the person prejudiced to respond  
2 to the disclosure or representation.

3 Section 19. LIMITS OF PRIVILEGE.

4 (a) There is no privilege under Section 17 for a  
5 collaborative law communication that is:

6 (1) available to the public under state open records  
7 act or made during a session of a collaborative law process  
8 that is open, or is required by law to be open, to the public;

9 (2) a threat or statement of a plan to inflict  
10 bodily injury or commit a crime of violence;

11 (3) intentionally used to plan a crime, commit or  
12 attempt to commit a crime, or conceal an ongoing crime or  
13 ongoing criminal activity; or

14 (4) in an agreement resulting from the collaborative  
15 law process, evidenced by a record signed by all parties to  
16 the agreement.

17 (b) The privileges under Section 17 for a  
18 collaborative law communication do not apply to the extent  
19 that a communication is:

20 (1) sought or offered to prove or disprove a claim  
21 or complaint of professional misconduct or malpractice arising  
22 from or related to a collaborative law process; or

23 (2) sought or offered to prove or disprove abuse,  
24 neglect, abandonment, or exploitation of a child or adult,  
25 unless the child protective services agency or adult  
26 protective services agency is a party to or otherwise  
27 participates in the process.

1           (c) There is no privilege under Section 17 if a  
2 tribunal finds, after a hearing in camera, that the party  
3 seeking discovery or the proponent of the evidence has shown  
4 the evidence is not otherwise available, the need for the  
5 evidence substantially outweighs the interest in protecting  
6 confidentiality, and the collaborative law communication is  
7 sought or offered in:

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

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

14           (d) If a collaborative law communication is subject  
15 to an exception under subsection (b) or (c), only the part of  
16 the communication necessary for the application of the  
17 exception may be disclosed or admitted.

18           (e) Disclosure or admission of evidence excepted  
19 from the privilege under subsection (b) or (c) does not make  
20 the evidence or any other collaborative law communication  
21 discoverable or admissible for any other purpose.

22           (f) The privileges under Section 17 do not apply if  
23 the parties agree in advance in a signed record, or if a  
24 record of a proceeding reflects agreement by the parties, that  
25 all or part of a collaborative law process is not privileged.  
26 This subsection does not apply to a collaborative law

1 communication made by a person that did not receive actual  
2 notice of the agreement before the communication was made.

3 Section 20. AUTHORITY OF TRIBUNAL IN CASE OF  
4 NONCOMPLIANCE.

5 (a) If an agreement fails to meet the requirements  
6 of Section 4, or a lawyer fails to comply with Section 14 or  
7 15, a tribunal may nonetheless find that the parties intended  
8 to enter into a collaborative law participation agreement if  
9 they:

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

12 (2) reasonably believed they were participating in a  
13 collaborative law process.

14 (b) If a tribunal makes the findings specified in  
15 subsection (a), and the interests of justice require, the  
16 tribunal may:

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

19 (2) apply the disqualification provisions of  
20 Sections 5, 6, 9, 10, and 11; and

21 (3) apply a privilege under Section 17.

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

1                   Section 22. RELATION TO ELECTRONIC SIGNATURES IN  
2 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits,  
3 and supersedes the federal Electronic Signatures in Global and  
4 National Commerce Act, 15 U.S.C.A. Section 7001 et seq.  
5 (2009), but does not modify, limit, or supersede Section  
6 101(c) of that act, 15 U.S.C.A. Section 7001(c), or authorize  
7 electronic delivery of any of the notices described in Section  
8 103(b) of that act, 15 U.S.C.A. Section 7003(b).

9                   Section 23. This act shall become effective on  
10 January 1, 2012.