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# A BILL FOR AN ACT

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RELATING TO THE HAWAII UNIFORM COLLABORATIVE LAW ACT.

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

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4   "CHAPTER

5   HAWAII UNIFORM COLLABORATIVE LAW ACT

6           § -1 Short title. This chapter shall be known and may  
7 be cited as the "Hawaii Uniform Collaborative Law Act".

8           § -2 Definitions. As used in this chapter:

9           "Collaborative law communication" means a statement,  
10 whether oral or in a record, or verbal or nonverbal, that:

11           (1) Is made to conduct, participate in, continue, or  
12 reconvene a collaborative law process; and

13           (2) Occurs after the parties sign a collaborative law  
14 participation agreement and before the collaborative  
15 law process is concluded.

16           "Collaborative law participation agreement" means an  
17 agreement by persons to participate in a collaborative law  
18 process.



1 "Collaborative law process" means a procedure intended to  
2 resolve a collaborative matter without intervention by a  
3 tribunal in which persons:

- 4 (1) Sign a collaborative law participation agreement; and
- 5 (2) Are represented by collaborative lawyers.

6 "Collaborative lawyer" means a lawyer who represents a  
7 party in a collaborative law process.

8 "Collaborative matter" means a dispute, transaction, claim,  
9 problem, or issue for resolution including a dispute, claim, or  
10 issue in a proceeding which is described in a collaborative law  
11 participation agreement.

12 "Law firm" means:

- 13 (1) Lawyers who practice law together in a partnership,  
14 professional corporation, sole proprietorship, limited  
15 liability company, or association;
- 16 (2) Lawyers employed in a legal services organization;
- 17 (3) Lawyers employed in the legal department of a  
18 corporation or other organization; or
- 19 (4) Lawyers employed in the legal department of a  
20 government or governmental subdivision, agency, or  
21 instrumentality.

22 "Nonparty participant" means a person, other than a party



1 and the party's collaborative lawyer, that participates in a  
2 collaborative law process.

3 "Party" means a person that signs a collaborative law  
4 participation agreement and whose consent is necessary to  
5 resolve a collaborative matter.

6 "Person" means an individual, corporation, business trust,  
7 estate, trust, partnership, limited liability company,  
8 association, joint venture, public corporation, government or  
9 governmental subdivision, agency, or instrumentality, or any  
10 other legal or commercial entity.

11 "Proceeding" means:

12 (1) A judicial, administrative, arbitral, or other  
13 adjudicative process before a tribunal, including  
14 related prehearing and post-hearing motions,  
15 conferences, and discovery; or

16 (2) A legislative hearing or similar process.

17 "Prospective party" means a person that discusses with a  
18 prospective collaborative lawyer the possibility of signing a  
19 collaborative law participation agreement.

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



1 "Related to a collaborative matter" means involving the  
2 same parties, transaction or occurrence, nucleus of operative  
3 fact, dispute, claim, or issue as the collaborative matter.

4 "Sign" means, with present intent to authenticate or adopt  
5 a record:

- 6 (1) To execute or adopt a tangible symbol; or
- 7 (2) To attach to or logically associate with the record an  
8 electronic symbol, sound, or process.

9 "Tribunal" means:

- 10 (1) A court, arbitrator, administrative agency, or other  
11 body acting in an adjudicative capacity which, after  
12 presentation of evidence or legal argument, has  
13 jurisdiction to render a decision affecting a party's  
14 interests in a matter; or
- 15 (2) A legislative body conducting a hearing or similar  
16 process.

17 § -3 Applicability. This chapter applies to a  
18 collaborative law participation agreement that meets the  
19 requirements of section -4 signed after the effective date of  
20 this chapter.

21 § -4 Collaborative law participation agreement;  
22 requirements. (a) A collaborative law participation agreement



1 must:

2 (1) Be in a record;

3 (2) Be signed by the parties;

4 (3) State the parties' intention to resolve a  
5 collaborative matter through a collaborative law  
6 process under this chapter;

7 (4) Describe the nature and scope of the matter;

8 (5) Identify the collaborative lawyer who represents each  
9 party in the process; and

10 (6) Contain a statement by each collaborative lawyer  
11 confirming the lawyer's representation of a party in  
12 the collaborative law process.

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

16 § -5 Beginning and concluding a collaborative law  
17 process. (a) A collaborative law process begins when the  
18 parties sign a collaborative law participation agreement.

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

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

22 (1) The resolution of a collaborative matter as evidenced



- 1           by a signed record;
- 2           (2) The resolution of a part of the collaborative matter,
- 3           evidenced by a signed record, in which the parties
- 4           agree that the remaining parts of the matter will not
- 5           be resolved in the process; or
- 6           (3) The termination of the process.
- 7           (d) A collaborative law process terminates:
- 8           (1) When a party gives notice to other parties in a record
- 9           that the process is ended; or
- 10          (2) When a party:
- 11           (A) Begins a proceeding related to a collaborative
- 12           matter without the agreement of all parties; or
- 13           (B) In a pending proceeding related to the matter:
- 14           (i) Initiates a pleading, motion, order to show
- 15           cause, or request for a conference with the
- 16           tribunal;
- 17           (ii) Requests that the proceeding be put on the
- 18           tribunal's active calendar; or
- 19           (iii) Takes similar action requiring notice to be
- 20           sent to the parties; or
- 21          (3) Except as otherwise provided by subsection (e), when a
- 22          party discharges a collaborative lawyer or a



1 collaborative lawyer withdraws from further  
2 representation of a party.

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

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

8 (g) Notwithstanding the discharge or withdrawal of a  
9 collaborative lawyer, a collaborative law process continues, if  
10 not later than thirty days after the date that the notice of the  
11 discharge or withdrawal of a collaborative lawyer required by  
12 subsection (d) (3) is sent to the parties:

13 (1) The unrepresented party engages a successor  
14 collaborative lawyer; and

15 (2) In a signed record:

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

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

21 (C) The successor collaborative lawyer confirms the  
22 lawyer's representation of a party in the



1 collaborative process.

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

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

9 § -6 Proceedings pending before tribunal; status report.

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

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

22 (c) A tribunal in which a proceeding is stayed under





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

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

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

14 § -7 Emergency order. During a collaborative law  
15 process, a tribunal may issue emergency orders to protect the  
16 health, safety, welfare, or interest of a party or family or  
17 household member as defined in section 586-1.

18 § - 8 Approval of agreement by tribunal. A tribunal may  
19 approve an agreement resulting from a collaborative law process.

20 § -9 Disqualification of collaborative lawyer and  
21 lawyers in associated law firm. (a) Except as otherwise  
22 provided in subsection (c), a collaborative lawyer is

1 disqualified from appearing before a tribunal to represent a  
2 party in a proceeding related to the collaborative matter.

3 (b) Except as otherwise provided in subsection (c) and  
4 sections -10 and -11, a lawyer in a law firm with which  
5 the collaborative lawyer is associated is disqualified from  
6 appearing before a tribunal to represent a party in a proceeding  
7 related to the collaborative matter if the collaborative lawyer  
8 is 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  
11 party:

12 (1) To ask a tribunal to approve an agreement resulting  
13 from the collaborative law process; or

14 (2) To seek or defend an emergency order to protect the  
15 health, safety, welfare, or interest of a party, or  
16 family or household member as defined in section 586-1  
17 if a successor lawyer is not immediately available to  
18 represent that person. In that event, subsections (a)  
19 and (b) apply when the party, or family or household  
20 member is represented by a successor lawyer or  
21 reasonable measures are taken to protect the health,  
22 safety, welfare, or interest of that person.



1           §   -10 Low income parties. (a) The disqualification of  
2 section    -9(a) applies to a collaborative lawyer representing  
3 a party with or without fee.

4           (b) After a collaborative law process concludes, another  
5 lawyer in a law firm with which a collaborative lawyer  
6 disqualified under section   -9(a) is associated may represent a  
7 party without fee in the collaborative matter or a matter  
8 related to the collaborative matter if:

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

13           (2) The collaborative law participation agreement so  
14 provides; and

15           (3) The collaborative lawyer is isolated from any  
16 participation in the collaborative matter or a matter  
17 related to the collaborative matter through procedures  
18 within the law firm which are reasonably calculated to  
19 isolate the collaborative lawyer from that  
20 participation.

21           §   -11 Governmental entity as party. (a) The  
22 disqualification of section   -9(a) applies to a collaborative



1 lawyer representing a party that is a government or governmental  
2 subdivision, agency, or instrumentality.

3 (b) After a collaborative law process concludes, another  
4 lawyer in a law firm with which the collaborative lawyer is  
5 associated may represent a government or governmental  
6 subdivision, agency, or instrumentality in the collaborative  
7 matter or a matter related to the collaborative matter if:

8 (1) The collaborative law participation agreement so  
9 provides; and

10 (2) The collaborative lawyer is isolated from any  
11 participation in the collaborative matter or a matter  
12 related to the collaborative matter through procedures  
13 within the law firm which are reasonably calculated to  
14 isolate the collaborative lawyer from that  
15 participation.

16 § -12 Disclosure of information. Except as provided by  
17 law other than this chapter, during the collaborative law  
18 process, on the request of another party, a party shall make  
19 timely, full, candid, and informal disclosure of information  
20 related to the collaborative matter without formal discovery. A  
21 party also shall update promptly previously disclosed  
22 information that has materially changed. The parties may define



1 the scope of disclosure during the collaborative law process.

2 § -13 Standards of professional responsibility and  
3 mandatory reporting not affected. This chapter does not affect:

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

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

10 § -14 Appropriateness of collaborative law process.

11 Before a prospective party signs a collaborative law  
12 participation agreement, a prospective collaborative lawyer  
13 shall:

14 (1) Assess with the prospective party factors the lawyer  
15 reasonably believes relate to whether a collaborative  
16 law process is appropriate for the prospective party's  
17 matter;

18 (2) Provide the prospective party with information that  
19 the lawyer reasonably believes is sufficient for the  
20 party to make an informed decision about the material  
21 benefits and risks of a collaborative law process as  
22 compared to the material benefits and risks of other



1 reasonably available alternatives for resolving the  
2 proposed collaborative matter, such as litigation,  
3 mediation, arbitration, or expert evaluation; and

4 (3) Advise the prospective party that:

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

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

13 (C) The collaborative lawyer and any lawyer in a law  
14 firm with which the collaborative lawyer is  
15 associated may not appear before a tribunal to  
16 represent a party in a proceeding related to the  
17 collaborative matter, except as authorized by  
18 section -9(c), -10(b), or -11(b).

19 § -15 Coercive or violent relationship. (a) Before a  
20 prospective party signs a collaborative law participation  
21 agreement, a prospective collaborative lawyer shall make  
22 reasonable inquiry whether the prospective party has a history



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

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

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

- 13 (1) The party or the prospective party requests beginning  
14 or continuing a process; and  
15 (2) The collaborative lawyer reasonably believes that the  
16 safety of the party or prospective party can be  
17 protected adequately during a process.

18 § -16 Confidentiality of collaborative law  
19 communication. A collaborative law communication is  
20 confidential to the extent agreed by the parties in a signed  
21 record or as provided by law of this state other than this  
22 chapter.



1           §   -17   Privilege against disclosure for collaborative law  
2 communication; admissibility; discovery. (a) Subject to  
3 sections   -18 and   -19, a collaborative law communication is  
4 privileged under subsection (b), is not subject to discovery,  
5 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 any  
8 other person from disclosing, a collaborative law  
9 communication.

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

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

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





1 participant.

2 (b) A person that makes a disclosure or representation  
3 about a collaborative law communication which prejudices another  
4 person in a proceeding may not assert a privilege under section  
5 -17, but this preclusion applies only to the extent necessary  
6 for the person prejudiced to respond to the disclosure or  
7 representation.

8 § -19 Limits of privilege. (a) There is no privilege  
9 under section -17 for a collaborative law communication that  
10 is:

11 (1) Available to the public under chapter 92 or made  
12 during a session of a collaborative law process that  
13 is open, or is required by law to be open, to the  
14 public;

15 (2) A threat or statement of a plan to inflict bodily  
16 injury or commit a crime of violence;

17 (3) Intentionally used to plan a crime, commit or attempt  
18 to commit a crime, or conceal an ongoing crime or  
19 ongoing criminal activity; or

20 (4) In an agreement resulting from the collaborative law  
21 process, evidenced by a record signed by all parties  
22 to the agreement.



1 (b) The privilege under section -17 for a  
2 collaborative law communication does not apply to the extent  
3 that a communication is:

4 (1) Sought or offered to prove or disprove a claim or  
5 complaint of professional misconduct or malpractice  
6 arising from or related to a collaborative law  
7 process; or

8 (2) Sought or offered to prove or disprove abuse, neglect,  
9 abandonment, or exploitation of a child or adult,  
10 unless the agencies of the department of human of  
11 human services responsible for child protective  
12 services or adult protective services is a party to or  
13 otherwise participates in the process.

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

21 (1) A court proceeding involving a felony or misdemeanor;  
22 or



1           (2) A proceeding seeking rescission or reformation of a  
2           contract arising out of the collaborative law process  
3           or in which a defense to avoid liability on the  
4           contract is asserted.

5           (d) If a collaborative law communication is subject to an  
6           exception under subsection (b) or (c), only the part of the  
7           communication necessary for the application of the exception may  
8           be disclosed or admitted.

9           (e) Disclosure or admission of evidence excepted from the  
10          privilege under subsection (b) or (c) does not make the evidence  
11          or any other collaborative law communication discoverable or  
12          admissible for any other purpose.

13          (f) The privileges under section       -17 do not apply if  
14          the parties agree in advance in a signed record, or if a record  
15          of a proceeding reflects agreement by the parties, that all or  
16          part of a collaborative law process is not privileged. this  
17          subsection does not apply to a collaborative law communication  
18          made by a person that did not receive actual notice of the  
19          agreement before the communication was made.

20          §   -20 Authority of tribunal in case of noncompliance.

21          (a) If an agreement fails to meet the requirements of section  
22          -4, or a lawyer fails to comply with section   -14 or   -15, a



1 tribunal may nonetheless find that the parties intended to enter  
2 into a collaborative law participation agreement if they:

- 3 (1) Signed a record indicating an intention to enter into  
4 a collaborative law participation agreement; and
- 5 (2) Reasonably believed they were participating in a  
6 collaborative law process.

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

- 10 (1) Enforce an agreement evidenced by a record resulting  
11 from the process in which the parties participated;
- 12 (2) Apply the disqualification provisions of sections  
13 -5, -6, -9, -10, and -11; and
- 14 (3) Apply the privilege under section -17.

15 § -21 Uniformity of application and construction. In  
16 applying and construing this uniform act, consideration must be  
17 given to the need to promote uniformity of the law with respect  
18 to its subject matter among states that enact it.

19 § -22 Relation to electronic signatures in global and  
20 national commerce act. This chapter modifies, limits, and  
21 supersedes the federal Electronic Signatures in Global and  
22 National Commerce Act, 15 U.S.C.A. section 7001 et seq. (2009),



1 but does not modify, limit, or supersede section 101(c) of that  
2 act, 15 U.S.C.A. section 7001(c), or authorize electronic  
3 delivery of any of the notices described in section 103(b) of  
4 that act, 15 U.S.C.A. section 7003(b).

5 SECTION 2. This Act shall take effect on July 1, 2011.

6

INTRODUCED BY: Cindy Evans  
JAN 21 2011



**Report Title:**

Uniform Collaborative Law Act

**Description:**

Enacts Uniform Collaborative Law Act, which authorizes disputants to enter into collaborative law participation agreements signifying interest to resolve the dispute without intervention of a tribunal (court or other third party decision maker). Requires parties to a collaborative law process to disclose information fully, candidly, and informally without formal discovery. Subject to certain exceptions, disqualifies attorneys in the collaborative process (and their law firms) from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

