



GOV. MSG. NO. 1310

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 03, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 03, 2012, the following bill was signed into law:

HB626 SD1

RELATING TO THE HAWAII UNIFORM
COLLABORATIVE LAW ACT.
Act 207 (12)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

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 shall:

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 collaborative
2 law communication does not apply to the extent that a
3 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 -



1 15, a tribunal may nonetheless find that the parties intended to
2 enter 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.

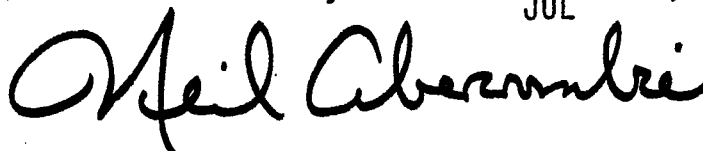
19 **§ -22 Relation to electronic signatures in global and**
20 **national commerce act.** This chapter modifies, limits, and
21 supersedes the federal Electronic Signatures in Global and
22 National Commerce Act, 15 U.S.C. section 7001 et seq., but does



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

5 SECTION 2. This Act shall take effect on July 1, 2012.

APPROVED this 3 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

