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SENATE BILL 401

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO COURTS; ENACTING THE UNIFORM COLLABORATIVE LAW ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Uniform Collaborative Law Act".

SECTION 2. DEFINITIONS.--As used in the Uniform Collaborative Law Act:

A. "collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

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

(2) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded;

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1 B. "collaborative law participation agreement"
2 means an agreement by persons to participate in a collaborative
3 law process;

4 C. "collaborative law process" means a procedure
5 intended to resolve a collaborative matter, without
6 intervention by a tribunal, in which persons:

7 (1) sign a collaborative law participation
8 agreement; and

9 (2) are represented by collaborative lawyers;

10 D. "collaborative lawyer" means a lawyer who
11 represents a party in a collaborative law process;

12 E. "collaborative matter" means a dispute,
13 transaction, claim, problem or issue for resolution, including
14 a dispute, claim or issue in a proceeding, that is described in
15 a collaborative law participation agreement and arises pursuant
16 to the family or domestic relations law of this state,
17 including:

18 (1) marriage, divorce, dissolution, annulment
19 and property distribution;

20 (2) child custody, visitation and parenting
21 time;

22 (3) alimony, maintenance and child support;

23 (4) adoption;

24 (5) parentage; and

25 (6) premarital, marital and postmarital

1 agreements;

2 F. "law firm" means:

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

6 (2) lawyers employed in a legal services
7 organization, or the legal department of a corporation or other
8 organization, or the legal department of a government or
9 governmental subdivision, agency or instrumentality;

10 G. "nonparty participant" means a person, other
11 than a party or the party's collaborative lawyer, that
12 participates in a collaborative law process;

13 H. "party" means a person that signs a
14 collaborative law participation agreement and whose consent is
15 necessary to resolve a collaborative matter;

16 I. "person" means an individual, corporation,
17 business trust, estate, trust, partnership, limited liability
18 company, association, joint venture, public corporation,
19 government or governmental subdivision, agency or
20 instrumentality, or any other legal or commercial entity;

21 J. "proceeding" means:

22 (1) a judicial, administrative, arbitral or
23 other adjudicative process before a tribunal, including related
24 prehearing and post-hearing motions, conferences and discovery;
25 or

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1 (2) a legislative hearing or similar process;

2 K. "prospective party" means a person that
3 discusses with a prospective collaborative lawyer the
4 possibility of signing a collaborative law participation
5 agreement;

6 L. "record" means information that is inscribed on
7 a tangible medium or that is stored in an electronic or other
8 medium and is retrievable in perceivable form;

9 M. "related to a collaborative matter" means
10 involving the same parties, transaction or occurrence, nucleus
11 of operative fact, dispute, claim or issue as the collaborative
12 matter;

13 N. "sign" means, with present intent to
14 authenticate or adopt a record:

15 (1) to execute or adopt a tangible symbol; or

16 (2) to attach to or logically associate with
17 the record an electronic symbol, sound or process; and

18 O. "tribunal" means:

19 (1) a court, arbitrator, administrative agency
20 or other body acting in an adjudicative capacity that, after
21 presentation of evidence or legal argument, has jurisdiction to
22 render a decision affecting a party's interests in a matter; or

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

25 SECTION 3. APPLICABILITY.--The Uniform Collaborative Law

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1 Act applies to a collaborative law participation agreement that
2 meets the requirements of Section 4 of that act signed on or
3 after January 1, 2014.

4 SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT--
5 REQUIREMENTS.--

6 A. A collaborative law participation agreement
7 shall:

- 8 (1) be in a record;
- 9 (2) be signed by the parties;
- 10 (3) state the parties' intention to resolve a
11 collaborative matter through a collaborative law process
12 pursuant to the Uniform Collaborative Law Act;

13 (4) describe the nature and scope of the
14 matter;

15 (5) identify the collaborative lawyer who
16 represents each party in the process; and

17 (6) contain a statement by each collaborative
18 lawyer confirming the lawyer's representation of a party in the
19 collaborative law process.

20 B. Parties may agree to include in a collaborative
21 law participation agreement additional provisions not
22 inconsistent with the Uniform Collaborative Law Act.

23 SECTION 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW
24 PROCESS.--

25 A. A collaborative law process begins when the

1 parties sign a collaborative law participation agreement.

2 B. A tribunal shall not order a party to
3 participate in a collaborative law process over that party's
4 objection.

5 C. A collaborative law process is concluded by:

6 (1) a resolution of a collaborative matter as
7 evidenced by a signed record;

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

12 (3) a termination of the process.

13 D. A collaborative law process terminates:

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

16 (2) when a party:

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

19 (b) in a pending proceeding related to
20 the matter: 1) initiates a pleading, motion, order to show
21 cause or request for a conference with the tribunal; 2)
22 requests that the proceeding be put on the tribunal's active
23 calendar; or 3) takes similar action requiring notice to be
24 sent to the parties; or

25 (3) except as otherwise provided by Subsection

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1 G of this section, when a party discharges a collaborative
2 lawyer or a collaborative lawyer withdraws from further
3 representation of a party.

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

7 F. A party may terminate a collaborative law
8 process with or without cause.

9 G. Notwithstanding the discharge or withdrawal of a
10 collaborative lawyer, a collaborative law process continues if,
11 not later than thirty days after the date that the notice of
12 the discharge or withdrawal of a collaborative lawyer required
13 by Subsection E of this section is sent to the parties:

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

16 (2) in a signed record:

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

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

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

25 H. A collaborative law process does not conclude

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1 if, with the consent of the parties, a party requests a
2 tribunal to approve a resolution of the collaborative matter or
3 any part thereof as evidenced by a signed record.

4 I. A collaborative law participation agreement may
5 provide additional methods of concluding a collaborative law
6 process.

7 SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL--STATUS
8 REPORT.--

9 A. Persons in a proceeding pending before a
10 tribunal may sign a collaborative law participation agreement
11 to seek to resolve a collaborative matter related to the
12 proceeding. The parties shall file promptly with the tribunal
13 a notice of the agreement after it is signed. An application
14 for a stay of the proceeding shall accompany the notice.

15 B. The parties shall file promptly with the
16 tribunal notice in a record when a collaborative law process
17 concludes. An application to lift the stay of the proceeding
18 shall accompany the notice. The notice shall not specify any
19 reason for termination of the process.

20 C. A tribunal in which a proceeding is stayed
21 pursuant to Subsection A of this section may require the
22 parties and collaborative lawyers to provide a status report on
23 the collaborative law process and the proceeding. A status
24 report shall include only information on whether the
25 collaborative law process is ongoing or concluded. A status

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1 report shall not include a report, assessment, evaluation,
2 recommendation, finding or other communication regarding a
3 collaborative law process or collaborative matter.

4 SECTION 7. EMERGENCY ORDER.--During a collaborative law
5 process, a tribunal may issue emergency orders to protect the
6 health, safety, welfare or interest of a party or household
7 member as defined in the Family Violence Protection Act.

8 SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL.--A tribunal
9 may approve an agreement resulting from a collaborative law
10 process.

11 SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND
12 LAWYERS IN ASSOCIATED LAW FIRM.--

13 A. The supreme court may determine whether a
14 collaborative lawyer is disqualified from appearing before a
15 tribunal to represent a party in a proceeding related to the
16 collaborative matter.

17 B. The supreme court may determine whether a lawyer
18 in a law firm with which the collaborative lawyer is associated
19 is disqualified from appearing before a tribunal to represent a
20 party in a proceeding related to the collaborative matter if
21 the collaborative lawyer is disqualified from doing so pursuant
22 to Subsection A of this section.

23 C. The supreme court may determine whether a
24 collaborative lawyer or a lawyer in a law firm with which the
25 collaborative lawyer is associated may represent a party:

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

3 (2) to seek or defend an emergency order to
4 protect the health, safety, welfare or interest of a party, or
5 household member as defined in the Family Violence Protection
6 Act if a successor lawyer is not immediately available to
7 represent that person.

8 D. The supreme court may determine whether, if
9 Paragraph (2) of Subsection C of this section applies, a
10 collaborative lawyer or lawyer in a law firm with which the
11 collaborative lawyer is associated may represent a party or
12 household member only until the person is represented by a
13 successor lawyer or reasonable measures are taken to protect
14 the health, safety, welfare or interest of the person.

15 **SECTION 10. LOW-INCOME PARTIES.--**

16 A. The supreme court may determine whether the
17 disqualification of Subsection A of Section 9 of the Uniform
18 Collaborative Law Act applies to a collaborative lawyer
19 representing a party with or without fee.

20 B. The supreme court may determine whether, after a
21 collaborative law process concludes, another lawyer in a law
22 firm with which a collaborative lawyer disqualified pursuant to
23 Subsection A of Section 9 of the Uniform Collaborative Law Act
24 is associated may represent a party without fee in the
25 collaborative matter or a matter related to the collaborative

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1 matter if:

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

6 (2) the collaborative law participation
7 agreement so provides; and

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

13 SECTION 11. GOVERNMENTAL ENTITY AS PARTY.--

14 A. The supreme court may determine whether the
15 disqualification provided in Subsection A of Section 9 of the
16 Uniform Collaborative Law Act applies to a collaborative lawyer
17 representing a party that is a government or governmental
18 subdivision, agency or instrumentality.

19 B. The supreme court may determine whether, after a
20 collaborative law process concludes, another lawyer in a law
21 firm with which the collaborative lawyer is associated may
22 represent a government or governmental subdivision, agency or
23 instrumentality in the collaborative matter or a matter related
24 to the collaborative matter if:

25 (1) the collaborative law participation

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1 agreement so provides; and

2 (2) the collaborative lawyer is isolated from
3 any participation in the collaborative matter or a matter
4 related to the collaborative matter through procedures within
5 the law firm that are reasonably calculated to isolate the
6 collaborative lawyer from such participation.

7 **SECTION 12. DISCLOSURE OF INFORMATION.**--Except as
8 provided by law other than the Uniform Collaborative Law Act,
9 including the rules of the supreme court, during the
10 collaborative law process, on the request of another party, a
11 party shall make timely, full, candid and informal disclosure
12 of information related to the collaborative matter without
13 formal discovery. A party also shall update promptly
14 previously disclosed information that has materially changed.
15 The parties may define the scope of disclosure during the
16 collaborative law process.

17 **SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
18 **MANDATORY REPORTING NOT AFFECTED.**--Except as otherwise provided
19 in the rules of the supreme court, the Uniform Collaborative
20 Law Act does not affect:

21 A. the professional responsibility obligations and
22 standards applicable to a lawyer or other licensed
23 professional; or

24 B. the obligation of a person to report abuse or
25 neglect, abandonment or exploitation of a child or adult

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1 pursuant to the law of this state.

2 SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW

3 PROCESS.--Before a prospective party signs a collaborative law
4 participation agreement, a prospective collaborative lawyer
5 shall:

6 A. assess with the prospective party factors that
7 the lawyer reasonably believes relate to whether a
8 collaborative law process is appropriate for the prospective
9 party's matter;

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

18 C. advise the prospective party that:

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

23 (2) participation in a collaborative law
24 process is voluntary and any party has the right to terminate
25 unilaterally a collaborative law process with or without cause;

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1 and

2 (3) the collaborative lawyer and any lawyer in
3 a law firm with which the collaborative lawyer is associated
4 may not appear before a tribunal to represent a party in a
5 proceeding related to the collaborative matter, except as
6 authorized by Subsection C of Section 9 of the Uniform
7 Collaborative Law Act, Subsection B of Section 10 of that act
8 or Subsection B of Section 11 of that act.

9 SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.--

10 A. Before a prospective party signs a collaborative
11 law participation agreement, a prospective collaborative lawyer
12 shall make reasonable inquiry whether the prospective party has
13 a history of a coercive or violent relationship with another
14 prospective party.

15 B. Throughout a collaborative law process, a
16 collaborative lawyer reasonably and continuously shall assess
17 whether the party that the collaborative lawyer represents has
18 a history of a coercive or violent relationship with another
19 party.

20 C. If a collaborative lawyer reasonably believes
21 that the party that the lawyer represents or the prospective
22 party that consults the lawyer has a history of a coercive or
23 violent relationship with another party or prospective party,
24 the lawyer may not begin or continue a collaborative law
25 process unless:

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

3 (2) the collaborative lawyer reasonably
4 believes that the safety of the party or prospective party can
5 be protected adequately during a process.

6 SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW
7 COMMUNICATION.--A collaborative law communication is
8 confidential to the extent agreed by the parties in a signed
9 record or as provided by law of this state other than the
10 Uniform Collaborative Law Act, including the rules of the
11 supreme court.

12 SECTION 17. PRIVILEGE AGAINST DISCLOSURE FOR
13 COLLABORATIVE LAW COMMUNICATION--ADMISSIBILITY--DISCOVERY.--

14 A. Except as otherwise provided in the rules of the
15 supreme court, subject to Sections 18 and 19 of the Uniform
16 Collaborative Law Act, a collaborative law communication is
17 privileged pursuant to Subsection B of this section, is not
18 subject to discovery and is not admissible in evidence.

19 B. Except as otherwise provided in the rules of the
20 supreme court, in a proceeding, the following privileges apply:

21 (1) a party may refuse to disclose, and may
22 prevent any other person from disclosing, a collaborative law
23 communication;

24 (2) a nonparty participant may refuse to
25 disclose, and may prevent any other person from disclosing, a

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1 collaborative law communication of the nonparty participant;
2 and

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

7 SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.--

8 A. Except as otherwise provided in the rules of the
9 supreme court, a privilege pursuant to Section 17 of the
10 Uniform Collaborative Law Act may be waived in a record or
11 orally during a proceeding if it is expressly waived by all
12 parties and, in the case of the privilege of a nonparty
13 participant, it is also expressly waived by the nonparty
14 participant.

15 B. Except as otherwise provided in the rules of the
16 supreme court, a person that makes a disclosure or
17 representation about a collaborative law communication that
18 prejudices another person in a proceeding may not assert a
19 privilege pursuant to Section 17 of the Uniform Collaborative
20 Law Act, but this preclusion applies only to the extent
21 necessary for the person prejudiced to respond to the
22 disclosure or representation.

23 SECTION 19. LIMITS OF PRIVILEGE.--

24 A. Except as otherwise provided in the rules of the
25 supreme court, there is no privilege pursuant to Section 17 of

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1 the Uniform Collaborative Law Act for a collaborative law
2 communication that is:

3 (1) available to the public pursuant to the
4 Inspection of Public Records Act or made during a session of a
5 collaborative law process that is open, or that is required by
6 law to be open, to the public;

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

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

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

15 B. Except as otherwise provided in the rules of the
16 supreme court, the privileges pursuant to Section 17 of the
17 Uniform Collaborative Law Act for a collaborative law
18 communication do not apply to the extent that a communication
19 is:

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

23 (2) sought or offered to prove or disprove
24 abuse, neglect, abandonment or exploitation of a child or
25 adult, unless the children, youth and families department is a

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1 party to or otherwise participates in the process.

2 C. Except as otherwise provided in the rules of the
3 supreme court, there is no privilege pursuant to Section 17 of
4 the Uniform Collaborative Law Act if a tribunal finds, after a
5 hearing in camera, that the party seeking discovery or the
6 proponent of the evidence has shown that the evidence is not
7 otherwise available, the need for the evidence substantially
8 outweighs the interest in protecting confidentiality and the
9 collaborative law communication is sought or offered in:

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

15 D. Except as otherwise provided in the rules of the
16 supreme court, if a collaborative law communication is subject
17 to an exception pursuant to Subsection B or C of this section,
18 only the part of the communication necessary for the
19 application of the exception may be disclosed or admitted.

20 E. Except as otherwise provided in the rules of the
21 supreme court, disclosure or admission of evidence excepted
22 from the privilege pursuant to Subsection B or C of this
23 section does not make the evidence or any other collaborative
24 law communication discoverable or admissible for any other
25 purpose.

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1 F. Except as otherwise provided in the rules of the
2 supreme court, the privileges pursuant to Section 17 of the
3 Uniform Collaborative Law Act do not apply if the parties agree
4 in advance in a signed record or if a record of a proceeding
5 reflects agreement by the parties that all or part of a
6 collaborative law process is not privileged. This subsection
7 does not apply to a collaborative law communication made by a
8 person that did not receive actual notice of the agreement
9 before the communication was made.

10 SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF
11 NONCOMPLIANCE.--

12 A. If an agreement fails to meet the requirements
13 of Section 4 of the Uniform Collaborative Law Act or a lawyer
14 fails to comply with Section 14 or 15 of that act, a tribunal
15 may nonetheless find that the parties intended to enter into a
16 collaborative law participation agreement if they:

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

19 (2) reasonably believed they were
20 participating in a collaborative law process.

21 B. If a tribunal makes the findings specified in
22 Subsection A of this section and the interests of justice
23 require, the tribunal may:

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

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1 (2) apply the disqualification provisions of
2 Sections 5, 6, 9, 10 and 11 of the Uniform Collaborative Law
3 Act; and

4 (3) apply a privilege pursuant to Section 17
5 of the Uniform Collaborative Law Act.

6 **SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--**

7 In applying and construing the Uniform Collaborative Law Act,
8 consideration shall be given to the need to promote uniformity
9 of the law with respect to its subject matter among states that
10 enact it.

11 **SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
12 **AND NATIONAL COMMERCE ACT.--**The Uniform Collaborative Law Act
13 modifies, limits and supersedes the federal Electronic
14 Signatures in Global and National Commerce Act, 15 U.S.C.
15 Section 7001, et seq., but does not modify, limit or supersede
16 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
17 authorize electronic delivery of any of the notices described
18 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

19 **SECTION 23. SEVERABILITY.--**If any part or application of
20 the provisions of this act is held invalid, the remainder or
21 its application to other situations or persons shall not be
22 affected.

23 **SECTION 24. EFFECTIVE DATE.--**The effective date of the
24 provisions of this act is January 1, 2014.