

## **BILL ANALYSIS**

Senate Research Center  
82R20653 KSD-F

H.B. 3833  
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Jurisprudence  
5/17/2011  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Commission on Uniform State Laws recommended that the collaborative law process be codified to incorporate best practices and uniformity with the laws of other states. The collaborative law process is a form of alternative dispute resolution that enables couples who have decided to dissolve their marriage to work with lawyers and other family professionals to find a resolution that best meets the needs of both parties and their children.

H.B. 3833 brings clarity and conformity to the collaborative process by enacting the Collaborative Family Law Act in the Texas Family Code.

H.B. 3833 amends current law relating to the adoption of a uniform collaborative law Act in regard to family law matters.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the Family Code by adding Title 1-A, as follows:

#### TITLE 1-A. COLLABORATIVE FAMILY LAW

#### CHAPTER 15. COLLABORATIVE FAMILY LAW ACT

#### SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 15.001. POLICY. Provides that it is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including disputes involving the conservatorship of, possession of or access to, and support of a child, and the early settlement of pending litigation through voluntary settlement procedures.

Sec. 15.002. CONFLICTS BETWEEN PROVISIONS. Provides that if a provision of this chapter conflicts with another provision of this code or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires that consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a collaborative law process Act for family law matters in applying and construing this chapter.

Sec. 15.004. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of

that Act (15 U.S.C. Section 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

[Reserves Sections 15.005-15.050 for expansion.]

#### SUBCHAPTER B. GENERAL PROVISIONS

Sec. 15.051. SHORT TITLE. Provides that this chapter may be cited as the Collaborative Family Law Act.

Sec. 15.052. DEFINITIONS. Defines, in this chapter, "collaborative family law communication," "collaborative family law participation agreement," "collaborative family law matter," "collaborative family law process," "collaborative lawyer," "law firm," "nonparty participant," "party," "proceeding," "prospective party," "record," "related to a collaborative family law matter," "sign," and "tribunal."

Sec. 15.053. APPLICABILITY. Provides that this chapter applies only to a matter arising under Title 1 (The Marriage Relationship) or 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship).

[Reserves Sections 15.054-15.100 for expansion.]

#### SUBCHAPTER C. COLLABORATIVE FAMILY LAW PROCESS

Sec. 15.101. REQUIREMENTS FOR COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT. (a) Requires that a collaborative family law participation agreement:

- (1) be in a record;
- (2) be signed by the parties;
- (3) state the parties' intent to resolve a collaborative family law matter through a collaborative family law process under this chapter;
- (4) describe the nature and scope of the collaborative family law matter;
- (5) identify the collaborative lawyer who represents each party in the collaborative family law process; and
- (6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative family law process.

(b) Requires that a collaborative family law participation agreement include provisions for:

- (1) suspending tribunal intervention in the collaborative family law matter while the parties are using the collaborative family law process; and
- (2) unless otherwise agreed in writing, jointly engaging any professionals, experts, or advisors serving in a neutral capacity.

(c) Authorizes parties to agree to include in a collaborative family law participation agreement additional provisions not inconsistent with this chapter.

Sec. 15.102. BEGINNING AND CONCLUDING COLLABORATIVE FAMILY LAW PROCESS. (a) Provides that a collaborative family law process begins when the parties sign a collaborative family law participation agreement.

(b) Prohibits a tribunal from ordering a party to participate in a collaborative family law process over that party's objection.

(c) Provides that a collaborative family law process is concluded by:

(1) resolution of a collaborative family law matter as evidenced by a signed record;

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

(3) termination of the process under Subsection (d).

(d) Provides that a collaborative family law process terminates:

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

(2) when a party:

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

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

(i) without the agreement of all parties, initiates a pleading, motion, or request for a conference with the tribunal;

(ii) initiates an order to show cause or requests that the proceeding be put on the tribunal's active calendar; or

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

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

(e) Requires a party's collaborative lawyer to give prompt notice in a record to all other parties of the collaborative lawyer's discharge or withdrawal.

(f) Authorizes a party to terminate a collaborative family law process with or without cause.

(g) Provides that, notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative family law process continues if, not later than the 30th day after the date the notice of the collaborative lawyer's discharge or withdrawal required by Subsection (e) is sent to the parties:

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

(2) in a signed record:

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

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

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

(h) Provides that a collaborative family law process does not conclude if, with the consent of the parties to a signed record resolving all or part of the collaborative matter, a party requests a tribunal to approve a resolution of the collaborative family law matter or any part of that matter as evidenced by a signed record.

(i) Authorizes a collaborative family law participation agreement to provide additional methods of concluding a collaborative family law process.

**Sec. 15.103. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.**

(a) Authorizes the parties to a proceeding pending before a tribunal to sign a collaborative family law participation agreement to seek to resolve a collaborative family law matter related to the proceeding. Requires the parties to file promptly with the tribunal a notice of the agreement after the agreement is signed. Provides that subject to Subsection (c) and Sections 15.104 and 15.105, the filing operates as a stay of the proceeding.

(b) Prohibits a tribunal that is notified, not later than the 30th day before the date of a proceeding, that the parties are using the collaborative family law process to attempt to settle a collaborative family law matter from, until a party notifies the tribunal that the collaborative family law process did not result in a settlement:

- (1) setting a proceeding or a hearing in the collaborative family law matter;
- (2) imposing discovery deadlines;
- (3) requiring compliance with scheduling orders; or
- (4) dismissing the proceeding.

(c) Requires the parties to notify the tribunal in a pending proceeding if the collaborative family law process results in a settlement. Requires the parties, if the collaborative family law process does not result in a settlement, to file a status report:

- (1) not later than the 180th day after the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, not later than the 180th day after the date the proceeding was filed; and
- (2) on or before the first anniversary of the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, on or before the first anniversary of the date the proceeding was filed, accompanied by a motion for continuance.

(d) Requires the tribunal to grant a motion for continuance filed under Subsection (c)(2) if the status report indicates that the parties desire to continue to use the collaborative family law process.

(e) Authorizes the tribunal, if the collaborative family law process does not result in a settlement on or before the second anniversary of the date the proceeding was filed, to:

- (1) set the proceeding for trial on the regular docket; or

(2) dismiss the proceeding without prejudice.

(f) Requires each party to file promptly with the tribunal notice in a record when a collaborative family law process concludes. Provides that the stay of the proceeding under Subsection (a) is lifted when the notice is filed. Prohibits the notice from specifying any reason for termination of the process.

(g) Authorizes a tribunal in which a proceeding is stayed under Subsection (a) to require the parties and collaborative lawyers to provide a status report on the collaborative family law process and the proceeding. Provides that a status report:

(1) is authorized to include only information on whether the process is ongoing or concluded; and

(2) is prohibited from including a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative family law process or collaborative family law matter.

(h) Prohibits a tribunal from considering a communication made in violation of Subsection (g).

(i) Requires a tribunal to provide parties notice and an opportunity to be heard before dismissing a proceeding based on delay or failure to prosecute in which a notice of collaborative family law process is filed.

Sec. 15.104. EMERGENCY ORDER. Authorizes a tribunal to issue an emergency order to protect the health, safety, welfare, or interest of a party or a family, as defined by Section 71.003 (Family), during a collaborative family law process. Provides that if the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.

Sec. 15.105. EFFECT OF WRITTEN SETTLEMENT AGREEMENT. (a) Provides that a settlement agreement under this chapter is enforceable in the same manner as a written settlement agreement under Section 154.071 (Effect of Written Settlement Agreement), Civil Practice and Remedies Code.

(b) Entitles a party to judgment on a collaborative family law settlement agreement, notwithstanding Rule 11 (Agreements To Be in Writing), Texas Rules of Civil Procedure, or another rule or law, if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the collaborative lawyer of each party.

Sec. 15.106. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM; EXCEPTION. (a) Defines "family" in this section.

(b) Provides that, except as provided by Subsection (d), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter regardless of whether the collaborative lawyer is representing the party for a fee.

(c) Provides that, except as provided by Subsection (d) and Sections 15.107 and 15.108, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding

related to the collaborative family law matter if the collaborative lawyer is disqualified from doing so under Subsection (b).

(d) Authorizes a collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated to represent a party:

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

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a family if a successor lawyer is not immediately available to represent that party.

(e) Provides that the exception prescribed by Subsection (d) does not apply after the party is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that party or family.

**Sec. 15.107. EXCEPTION FROM DISQUALIFICATION FOR REPRESENTATION OF LOW-INCOME PARTIES.** Authorizes another lawyer in a law firm with which a collaborative lawyer disqualified under Section 15.106(b) is associated to represent a party without a fee in the collaborative family law matter or a matter related to the collaborative family law matter after a collaborative family law process concludes, if:

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

(2) the collaborative family law participation agreement authorizes that representation; and

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

**Sec. 15.108. GOVERNMENTAL ENTITY AS PARTY.** (a) Defines "governmental entity" in this section.

(b) Provides that the disqualification prescribed by Section 15.106(b) applies to a collaborative lawyer representing a party that is a governmental entity.

(c) Authorizes another lawyer in a law firm with which the collaborative lawyer is associated to represent a governmental entity in the collaborative family law matter or a matter related to the collaborative family law matter after a collaborative family law process concludes, if:

(1) the collaborative family law participation agreement authorizes that representation; and

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

**Sec. 15.109. DISCLOSURE OF INFORMATION.** (a) Requires a party, except as provided by law other than this chapter, during the collaborative family law process, on the request of another party, to make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. Requires a

party to update promptly any previously disclosed information that has materially changed.

- (b) Authorizes the parties to define the scope of the disclosure under Subsection (a) during the collaborative family law process.

Sec. 15.110. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED. Provides that this chapter does not affect:

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person under other law to report abuse or neglect, abandonment, or exploitation of a child or adult.

Sec. 15.111. INFORMED CONSENT. Requires a prospective collaborative lawyer, before a prospective party signs a collaborative family law participation agreement, to:

- (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative family law process is appropriate for the prospective party's matter;
- (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative family law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, including litigation, mediation, arbitration, or expert evaluation; and
- (3) advise the prospective party that:
  - (A) after signing an agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative family law matter, the collaborative family law process terminates;
  - (B) participation in a collaborative family law process is voluntary and any party has the right to terminate unilaterally a collaborative family law process with or without cause; and
  - (C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative family law matter, except as authorized by Section 15.106(d), 15.107(b), or 15.108(c).

Sec. 15.112. FAMILY VIOLENCE. (a) Defines, in this section, "dating relationship," "family violence," "household," and "member of a household."

- (b) Requires a prospective collaborative lawyer, before a prospective party signs a collaborative family law participation agreement in a collaborative family law matter in which another prospective party is a member of the prospective party's family or household or with whom the prospective party has or has had a dating relationship, to make reasonable inquiry regarding whether the prospective party has a history of family violence with the other prospective party.
- (c) Prohibits a collaborative lawyer, if the lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, from beginning or continuing a collaborative family law process unless:

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

(2) the collaborative lawyer or prospective collaborative lawyer determines with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence.

Sec. 15.113. CONFIDENTIALITY OF COLLABORATIVE FAMILY LAW COMMUNICATION. (a) Provides that a collaborative family law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law other than this chapter.

(b) Provides that if the parties agree in a signed record, the conduct and demeanor of the parties and nonparty participants, including their collaborative lawyers, are confidential.

(c) Provides that if the parties agree in a signed record, communications related to the collaborative family law matter occurring before the signing of the collaborative family law participation agreement are confidential.

Sec. 15.114. PRIVILEGE AGAINST DISCLOSURE OF COLLABORATIVE FAMILY LAW COMMUNICATION. (a) Provides that, except as provided by Section 15.115, a collaborative family law communication, whether made before or after the institution of a proceeding, is privileged and not subject to disclosure and is prohibited from being used as evidence against a party or nonparty participant in a proceeding.

(b) Provides that any record of a collaborative family law communication is privileged, and neither the parties nor the nonparty participants may be required to testify in a proceeding related to or arising out of the collaborative family law matter or be subject to a process requiring disclosure of privileged information or data related to the collaborative matter.

(c) Provides that an oral communication or written material used in or made a part of a collaborative family law process is admissible or discoverable if it is admissible or discoverable independent of the collaborative family law process.

(d) Authorizes the issue of privilege to be presented to the tribunal having jurisdiction of the proceeding to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the tribunal or whether the communications or materials are subject to disclosure if this section conflicts with other legal requirements for disclosure of communications, records, or materials. Provides that the presentation of the issue of privilege under this subsection does not constitute a termination of the collaborative family law process under Section 15.102(d)(2)(B).

(e) Authorizes a party or nonparty participant to disclose privileged collaborative family law communications to a party's successor counsel, subject to the terms of confidentiality in the collaborative family law participation agreement. Provides that collaborative family law communications disclosed under this subsection remain privileged.

(f) Prohibits a person who makes a disclosure or representation about a collaborative family law communication that prejudices the rights of a party or nonparty participant in a proceeding from asserting a privilege under this section. Provides that the restriction provided by this subsection applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Sec. 15.115. LIMITS OF PRIVILEGE. (a) Provides that the privilege prescribed by Section 15.114 does not apply to a collaborative family law communication that is:

(1) in an agreement resulting from the collaborative family law process, evidenced in a record signed by all parties to the agreement;

(2) subject to an express waiver of the privilege in a record or orally during a proceeding if the waiver is made by all parties and nonparty participants;

(3) available to the public under Chapter 552 (Public Information), Government Code, or made during a session of a collaborative family law process that is open, or is required by law to be open, to the public;

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

(5) a disclosure of a plan to commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(6) a disclosure in a report of:

(A) suspected abuse or neglect of a child to an appropriate agency under Subchapter B (Report of Abuse or Neglect; Immunities), Chapter 261 (Investigation of Report of Child Abuse or Neglect), or in a proceeding regarding the abuse or neglect of a child, except that evidence may be excluded in the case of communications between an attorney and client under Subchapter C (Confidentiality and Privileged Communication), Chapter 261; or

(B) abuse, neglect, or exploitation of an elderly or disabled person to an appropriate agency under Subchapter B (Reports of Abuse, Neglect, or Exploitation: Immunities), Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code; or

(7) sought or offered to prove or disprove:

(A) a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process;

(B) an allegation that the settlement agreement was procured by fraud, duress, coercion, or other dishonest means or that terms of the settlement agreement are illegal;

(C) the necessity and reasonableness of attorney's fees and related expenses incurred during a collaborative family law process or to challenge or defend the enforceability of the collaborative family law settlement agreement; or

(D) a claim against a third person who did not participate in the collaborative family law process.

(b) Authorizes only the part of the communication necessary for the application of the exception to be disclosed or admitted if a collaborative family law communication is subject to an exception under Subsection (a).

(c) Provides that the disclosure or admission of evidence excepted from the privilege under Subsection (a) does not make the evidence or any other

collaborative family law communication discoverable or admissible for any other purpose.

Sec. 15.116. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE. (a) Authorizes a tribunal, notwithstanding that an agreement fails to meet the requirements of Section 15.101 or that a lawyer has failed to comply with Section 15.111 or 15.112, to find that the parties intended to enter into a collaborative family law participation agreement if the parties:

(1) signed a record indicating an intent to enter into a collaborative family law participation agreement; and

(2) reasonably believed the parties were participating in a collaborative family law process.

(b) Authorizes a tribunal, if the tribunal makes the findings specified in Subsection (a) and determines that the interests of justice require the following action, to:

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

(2) apply the disqualification provisions of Sections 15.106, 15.107, and 15.108; and

(3) apply the collaborative family law privilege under Section 15.114.

SECTION 2. Repealers: Sections 6.603 (Collaborative Law) and 153.0072 (Collaborative Law), Family Code.

SECTION 3. Makes application of Title 1-A, Family Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2011.