

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 486

By Senators Woodrum and Trump

[Introduced January 27, 2023; referred
to the Committee on the Judiciary]

INTERIM
BILL

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §56-13-1, §56-13-2, §56-13-3, §56-13-4, §56-13-5, §56-13-6, §56-13-7, §56-
 3 13-8, §56-13-9, §56-13-10, §56-13-11, §56-13-12, §56-13-13, §56-13-14, §56-13-15, §56-
 4 13-16, §56-13-17, §56-13-18, §56-13-19, §56-13-20, §56-13-21, §56-13-22, §56-13-23,
 5 and §56-13-24, all relating to adopting the Uniform Collaborative Law Act; setting forth
 6 short title; defining terms; clarifying applicability; setting forth requirements for a
 7 collaborative law participation agreement; defining the beginning and concluding of the
 8 "collaborative law process"; providing for stay of pending proceedings; providing guidance
 9 for emergency protective orders; providing for approval of agreement by tribunal;
 10 disqualification of collaborative lawyer and lawyers in associated law firm; setting forth
 11 standards concerning low-income parties; setting forth standards concerning a
 12 governmental entity as party; setting forth standards concerning disclosure of information;
 13 providing that standards of professional responsibility and mandatory reporting not
 14 affected; defining the appropriateness of collaborative law process; providing special
 15 standards concerning a coercive or violent relationship; providing for the confidentiality of
 16 collaborative law communication; enumerating a privilege against disclosure for
 17 collaborative law communication and for its admissibility and discovery of the same;
 18 providing for a waiver and preclusion of this privilege; defining the limits of this privilege;
 19 setting the authority of a tribunal in case of noncompliance; providing for uniformity of
 20 application and construction; establishing relation to the Electronic Signatures in Global
 21 and National Commerce Act; and setting effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. UNIFORM COLLABORATIVE LAW ACT.

§56-13-1. Short Title.

1 This article may be cited as the Uniform Collaborative Law Act.

§56-13-2. Definitions.

1 As used in this article:

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

4 (A) Is made to conduct, participate in, continue, or reconvene a collaborative law process;

5 and

6 (B) Occurs after the parties sign a collaborative law participation agreement and before the
7 collaborative law process is concluded.

8 (2) "Collaborative law participation agreement" means an agreement by persons to
9 participate in a collaborative law process.

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

12 (A) Sign a collaborative law participation agreement; and

13 (B) Are represented by collaborative lawyers.

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

16 (5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for
17 resolution, including a dispute, claim, or issue in a proceeding, which is described in a
18 collaborative law participation agreement.

19 (6) "Law firm" means:

20 (A) Lawyers who practice law together in a partnership, professional corporation, sole
21 proprietorship, limited liability company, or association; and

22 (B) Lawyers employed in a legal services organization, or the legal department of a
23 corporation or other organization, or the legal department of a government or governmental
24 subdivision, agency, or instrumentality.

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

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

29 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,
30 limited liability company, association, joint venture, public corporation, government or
31 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

32 (10) "Proceeding" means:

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

35 (B) A legislative hearing or similar process.

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

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

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

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

43 (A) To execute or adopt a tangible symbol; or

44 (B) To attach to or logically associate with the record an electronic symbol, sound, or
45 process.

46 (15) "Tribunal" means:

47 (A) A court, arbitrator, administrative agency, or other body acting in an adjudicative
48 capacity which, after presentation of evidence or legal argument, has jurisdiction to render a
49 decision affecting a party's interests in a matter; or

50 (B) A legislative body conducting a hearing or similar process.

§56-13-3. Applicability.

1 This article applies to a collaborative law participation agreement that meets the

2 requirements of §56-13-4 of this code and signed after July 1, 2023.

§56-13-4. Collaborative Law Participation Agreement; Requirements.

1 (a) A collaborative law participation agreement must:

2 (1) Be in a record;

3 (2) Be signed by the parties;

4 (3) State the parties' intention to resolve a collaborative matter through a collaborative law
5 process under the provisions of this article.

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

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

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

10 (b) Parties may agree to include in a collaborative law participation agreement additional
11 provisions not inconsistent with the provisions of this article.

§56-13-5. Beginning And Concluding Collaborative Law Process.

12 (a) A collaborative law process begins when the parties sign a collaborative law
13 participation agreement.

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

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

17 (1) Resolution of a collaborative matter as evidenced by a signed record;

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

20 (3) Termination of the process.

21 (d) A collaborative law process terminates:

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

23 (2) When a party:

24 (A) Begins a proceeding related to a collaborative matter without the agreement of all
25 parties; or

26 (B) In a pending proceeding related to the matter:

27 (i) Initiates a pleading, motion, order to show cause, or request for a conference with the
28 tribunal;

29 (ii) Requests that the proceeding be put on the tribunal's active calendar; or

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

31 (3) Except as otherwise provided by §56-13-5(g) of this code when a party discharges a
32 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

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

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

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

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

40 (2) In a signed record:

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

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

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

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

49 (i) A collaborative law participation agreement may provide additional methods of

50 concluding a collaborative law process.

§56-13-6. Proceedings Pending Before Tribunal; Status Report.

1 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
2 participation agreement to seek to resolve a collaborative matter related to the proceeding. The
3 parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
4 §56-13-6(c), §56-13-7, and §56-13-8 of this code, the filing operates as an application for a stay of
5 the proceeding.

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

9 (c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties
10 and collaborative lawyers to provide a status report on the collaborative law process and the
11 proceeding. A status report may include only information on whether the process is ongoing or
12 concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other
13 communication regarding a collaborative law process or collaborative law matter.

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

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

§56-13-7. Emergency Order.

18 During a collaborative law process, a tribunal may issue emergency orders to protect the
19 health, safety, welfare, or interest of a party or a family or household member as defined in §48-27-
20 204 of this code.

§56-13-8. Approval of Agreement by Tribunal.

1 A tribunal may approve an agreement resulting from a collaborative law process.

§56-13-9. Disqualification of Collaborative Lawyer and Lawyers In Associated Law Firm.

1 (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified
2 from appearing before a tribunal to represent a party in a proceeding related to the collaborative
3 matter.

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

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

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

12 (2) To seek or defend an emergency order to protect the health, safety, welfare, or interest
13 of a party, or a family or household member as defined in §48-27-204 of this code. if a successor
14 lawyer is not immediately available to represent that person.

15 (d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the
16 collaborative lawyer is associated, may represent a party or a family or household member as
17 defined in §48-27-204 of this code only until the person is represented by a successor lawyer or
18 reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

§56-13-10. Low Income Parties.

1 (a) The disqualification of §56-13-9(a) of this code applies to a collaborative lawyer
2 representing a party with or without fee.

3 (b) After a collaborative law process concludes, another lawyer in a law firm with which a
4 collaborative lawyer disqualified under §56-13-9(a) of this code is associated may represent a
5 party without fee in the collaborative matter or a matter related to the collaborative matter if:

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

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

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

§56-13-11. Governmental Entity as Party.

1 (a) The disqualification of §56-13-9(a) of this code applies to a collaborative lawyer
2 representing a party that is a government or governmental subdivision, agency, or instrumentality.

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

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

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

§56-13-12. Disclosure of Information.

1 Except as provided by law other than this article during the collaborative law process, on
2 the request of another party, a party shall make timely, full, candid, and informal disclosure of
3 information related to the collaborative matter without formal discovery. A party also shall update
4 promptly previously disclosed information that has materially changed. The parties may define the
5 scope of disclosure during the collaborative law process.

§56-13-13. Standards Of Professional Responsibility And Mandatory Reporting Not
Affected.

1 This article does not affect:

2 (1) The professional responsibility obligations and standards applicable to a lawyer or
3 other licensed professional; or

4 (2) The obligation of a person to report abuse or neglect, abandonment, or exploitation of a
5 child or adult under the law of this state.

§56-13-14. Appropriateness Of Collaborative Law Process.

1 Before a prospective party signs a collaborative law participation agreement, a prospective
2 collaborative lawyer shall:

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

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

10 (3) Advise the prospective party that:

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

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

16 (C) The collaborative lawyer and any lawyer in a law firm with which the collaborative
17 lawyer is associated may not appear before a tribunal to represent a party in a proceeding related
18 to the collaborative matter, except as authorized by §56-13- 9(c), §56-13-10(b), or §56-13-11(b) of
19 this code.

§56-13-15. Coercive or Violent Relationship.

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

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

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

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

§56-13-16. Confidentiality Of Collaborative Law Communication.

1 A collaborative law communication is confidential to the extent agreed by the parties in a
 2 signed record or as provided by law of this state other than this article.

§56-13-17. Privilege Against Disclosure for Collaborative Law Communication;
Admissibility; Discovery.

1 (a) Subject to the provisions of §56-13-18 and §56-13-19 of this code, a collaborative law
 2 communication is privileged under subsection (b), is not subject to discovery, and is not admissible
 3 in evidence.

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

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

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

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

§56-13-18. Waiver And Preclusion of Privilege.

1 (a) A privilege under §56-13-17 of this code may be waived in a record or orally during a
2 proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty
3 participant, it is also expressly waived by the nonparty participant.

4 (b) A person that makes a disclosure or representation about a collaborative law
5 communication which prejudices another person in a proceeding may not assert a privilege under
6 §56-13-17 of this code, but this preclusion applies only to the extent necessary for the person
7 prejudiced to respond to the disclosure or representation.

§56-13-19. Limits of Privilege.

1 (a) There is no privilege under §56-13-17 of this code for a collaborative law
2 communication that is:

3 (1) Available to the public under the provisions of §29B-1-1, et. seq. of this code or made
4 during a session of a collaborative law process that is open, or is required by law to be open, to the
5 public;

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

7 (3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an
8 ongoing crime or ongoing criminal activity; or

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

11 (b) The privileges under §56-13-17 of this code for a collaborative law communication do
12 not apply to the extent that a communication is:

13 (1) Sought or offered to prove or disprove a claim or complaint of professional misconduct
14 or malpractice arising from or related to a collaborative law process; or

15 (2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of
16 a child or adult, unless the Child Welfare Service or Adult Protective Services is a party to or
17 otherwise participates in the process.

18 (c) There is no privilege under §56-13-17 of this code if a tribunal finds, after a hearing in
19 camera, that the party seeking discovery or the proponent of the evidence has shown the evidence
20 is not otherwise available, the need for the evidence substantially outweighs the interest in
21 protecting confidentiality, and the collaborative law communication is sought or offered in:

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

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

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

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

31 (f) The privileges under §56-13-17 of this code do not apply if the parties agree in advance
32 in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of
33 a collaborative law process is not privileged. This subsection does not apply to a collaborative law
34 communication made by a person that did not receive actual notice of the agreement before the
35 communication was made.

§56-13-20. Authority of Tribunal in Case of Noncompliance.

1 (a) If an agreement fails to meet the requirements of §56-13-4 of this code, or a lawyer fails
2 to comply with the provisions of §56-13-14 or §56-13-15 of this code, a tribunal may nonetheless
3 find that the parties intended to enter into a collaborative law participation agreement if they:

4 (1) Signed a record indicating an intention to enter into a collaborative law participation
5 agreement; and

6 (2) Reasonably believed they were participating in a collaborative law process.

7 (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice

8 require, the tribunal may:

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

11 (2) Apply the disqualification provisions of §56-13- 5, §56-13-6, §56-13-9, §56-13-10, and
12 §56-13-11 of this code; and

13 (3) Apply a privilege under §56-13-17 of this code.

§56-13-21. Uniformity of Application and Construction.

1 In applying and construing this uniform act, consideration must be given to the need to
2 promote uniformity of the law with respect to its subject matter among states that enact it.

§56-13- 2. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, and supersedes the federal Electronic Signatures in Global
2 and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or
3 supersede Section 101(c) of that act, 15 U.S.C Section 7001(c), or authorize electronic delivery of
4 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

§56-13-23. Severability.

1 If any provision of this article or its application to any person or circumstance is held invalid,
2 the invalidity does not affect other provisions or applications of this article which can be given
3 effect without the invalid provision or application, and to this end the provisions of this article are
4 severable.

§56-13-24. Effective Date.

1 The effective date of this article is July 1, 2023.

NOTE: The purpose of this bill is to adopt the Uniform Collaborative Law Act

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.