

As Introduced

**128th General Assembly
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H. B. No. 467

Representatives Harwood, Blessing

**Cosponsors: Representatives Murray, Wagner, Pillich, McGregor, Book,
Mecklenborg, Phillips, Bolon, Letson, Hollington, Grossman, Bacon, Belcher,
Williams, B.**

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A B I L L

To enact sections 3117.11, 3117.12, 3117.13, 3117.14, 1
3117.15, 3117.16, 3117.17, 3117.18, 3117.19, 2
3117.20, 3117.21, 3117.22, 3117.23, 3117.24, 3
3117.25, 3117.26, and 3117.27 of the Revised Code 4
to establish a statutory collaborative family law 5
process to aid in the resolution of family law 6
disputes. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3117.11, 3117.12, 3117.13, 3117.14, 8
3117.15, 3117.16, 3117.17, 3117.18, 3117.19, 3117.20, 3117.21, 9
3117.22, 3117.23, 3117.24, 3117.25, 3117.26, and 3117.27 be 10
enacted to read as follows: 11

Sec. 3117.11. As used in sections 3117.11 to 3117.27 of the 12
Revised Code: 13

(A) "Collaborative family law communication" means any 14
statement that occurs after the parties sign a collaborative 15
family law participation agreement and before the collaborative 16
family law process is concluded and that is made for the purpose 17

of conducting, participating in, continuing, or reconvening a 18
collaborative law process. 19

(B) "Collaborative family law participation agreement" means 20
an agreement by persons to participate in a collaborative family 21
law process. 22

(C) "Collaborative family law process" means a procedure 23
intended to resolve a matter without intervention by a court in 24
which parties sign a collaborative family law participation 25
agreement and are represented by collaborative family lawyers. 26

(D) "Collaborative family lawyer" means a lawyer who 27
represents a party in a collaborative family law process. 28

(E) "Collaborative matter" or "matter" means a dispute, 29
transaction, claim, problem, or issue for resolution that arises 30
under Title XXXI of the Revised Code and is described in a 31
collaborative family law participation agreement. The term 32
includes a dispute, claim, or issue in a proceeding. 33

(F) "Family or household member" has the same meaning as in 34
section 3113.31 of the Revised Code. 35

(G) "Law firm" means an association of lawyers who practice 36
law together in a partnership, professional corporation, sole 37
proprietorship, limited liability company, or other association, 38
lawyers employed in a legal services organization, the legal 39
department of a corporation or other organization, or the legal 40
department of a government or governmental subdivision, agency, or 41
instrumentality. 42

(H) "Nonparty participant" means a person, other than a party 43
and the party's collaborative family lawyer, that participates in 44
a collaborative family law process. 45

(I) "Party" means a person that signs a collaborative family 46
law participation agreement and whose consent is necessary to 47

resolve a matter. 48

(J) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. 49
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(K) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a court, including related prehearing and post-hearing motions, conferences, and discovery. 54
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(L) "Prospective party" means a person that discusses the possibility of signing a collaborative family law participation agreement with a prospective collaborative family lawyer. 57
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(M) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. 60
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(N) "Related to a collaborative family law matter" or "related to a matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter. 63
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(O) "Sign" means, with present intent to authenticate or adopt a record in order, to do either of the following: 67
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(1) Execute or adopt a tangible symbol; 69

(2) Attach to or logically associate with the record an electronic symbol, sound, or process. 70
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Sec. 3117.12. (A) Sections 3117.11 to 3117.27 of the Revised Code apply to a collaborative family law participation agreement that meets the requirements of section 3117.13 of the Revised Code and is signed on or after the effective date of this section. 72
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(B) A court may not order a party to participate in a 76

collaborative family law process over that party's objection. 77

Sec. 3117.13. (A) A collaborative family law participation 78
agreement must be in a record, be signed by the parties, and 79
include all of the following: 80

(1) A statement of the parties' intent to resolve a matter 81
through a collaborative family law process under sections 3117.11 82
to 3117.27 of the Revised Code; 83

(2) A description of the nature and scope of the matter; 84

(3) The identity of the collaborative family lawyer who 85
represents each party in the collaborative family law process; 86

(4) A statement by each collaborative family lawyer 87
confirming the lawyer's representation of a party in the 88
collaborative family law process. 89

(B) Parties to a collaborative family law participation 90
agreement may agree to include additional provisions not 91
inconsistent with sections 3117.11 to 3117.27 of the Revised Code. 92

Sec. 3117.14. (A) A collaborative family law process begins 93
when the parties sign a collaborative family law participation 94
agreement. 95

(B) A collaborative family law process is concluded by any of 96
the following: 97

(1) A negotiated resolution of the matter as evidenced by a 98
signed record; 99

(2) A negotiated resolution of a portion of the matter as 100
evidenced by a signed record in which the parties agree that the 101
remaining portions of the matter will not be resolved in the 102
collaborative family law process; 103

(3) Termination of the process under division (C) of this 104

<u>section.</u>	105
<u>(C) A collaborative family law process terminates when any of the following occurs:</u>	106
<u>(1) A party gives notice in a record that the collaborative family law process is ended.</u>	107
<u>(2) A party does either of the following:</u>	108
<u>(a) Begins a proceeding related to the collaborative family law matter without the agreement of all parties;</u>	109
<u>(b) In a pending proceeding related to the collaborative family law matter, does any of the following:</u>	110
<u>(i) Initiates a pleading, motion, order to show cause, or request for a conference with the court;</u>	111
<u>(ii) Requests that the proceeding be put on the court's docket;</u>	112
<u>(iii) Takes similar action requiring notice to be sent to the parties;</u>	113
<u>(iv) Except as otherwise provided by division (E)(2) of this section, discharges a collaborative family lawyer.</u>	114
<u>(3) A collaborative family lawyer withdraws from further representation of a party.</u>	115
<u>(4) Termination occurs in any other way provided for in the collaborative family law participation agreement.</u>	116
<u>(D) A party may terminate a collaborative family law process with or without cause. A notice of termination need not specify a reason for terminating the process.</u>	117
<u>(E)(1) A collaborative family lawyer who is discharged or who withdraws shall give prompt notice in a record of the discharge or withdrawal to all other parties.</u>	118
<u>(2) Notwithstanding the discharge or withdrawal of a</u>	119

collaborative family lawyer, a collaborative family law process 134
continues if the unrepresented party engages a successor 135
collaborative family lawyer, and, in a signed record, all parties 136
consent to continue the process by reaffirming the collaborative 137
family law participation agreement, the collaborative family law 138
participation agreement is amended to identify the successor 139
collaborative family lawyer, and the successor collaborative 140
family lawyer confirms the lawyer's representation of a party in 141
the collaborative family law process. 142

(F) A collaborative family law process does not terminate if, 143
with the consent of all parties, a party requests a court to 144
approve a negotiated resolution of the matter or any portion of 145
the matter as evidenced by a signed record. 146

Sec. 3117.15. (A) Parties to a proceeding pending before a 147
court may sign a collaborative family law participation agreement 148
to seek to resolve a matter related to the proceeding. Parties 149
shall promptly file a notice of the agreement with the court after 150
the collaborative family law participation agreement is signed. 151
Subject to division (C) of this section, the filing operates as a 152
stay of the proceeding. 153

(B) Parties shall promptly file a notice of termination in a 154
record with the court when a collaborative family law process 155
terminates. The stay of the proceeding under division (A) of this 156
section is lifted when the notice is filed with the court. The 157
notice may not specify any reason for the termination. 158

(C) A court may require parties and collaborative family 159
lawyers to provide status reports on the proceeding. A status 160
report may not include a report, assessment, evaluation, 161
recommendation, finding, or other communication regarding a 162
collaborative family law process, except that a court may require 163
parties and lawyers to disclose in a status report whether the 164

process is ongoing or concluded. 165

A communication made in violation of this division may not be 166
considered by a court. 167

Sec. 3117.16. (A) Except as otherwise provided in division 168
(C) of this section, a collaborative family lawyer may not appear 169
before a court to represent a party in a proceeding related to the 170
collaborative family law matter. 171

(B) Except as otherwise provided in division (C) of this 172
section and in sections 3117.17 and 3117.18 of the Revised Code, a 173
lawyer in a law firm with which the collaborative family lawyer is 174
associated may not appear before a court to represent a party in a 175
proceeding related to the collaborative family law matter if the 176
collaborative family lawyer is disqualified from doing so under 177
division (A) of this section. 178

(C) A collaborative family lawyer or a lawyer in a law firm 179
with which the collaborative family lawyer is associated may 180
represent a party for the following purposes: 181

(1) To ask a court to approve an agreement resulting from the 182
collaborative family law process; 183

(2) To seek or defend an emergency order to protect the 184
health, safety, welfare, or interests of a party or of a family or 185
household member of a party if a successor lawyer is not 186
immediately available to represent the party or family or 187
household member of the party. If a successor lawyer is not 188
immediately available to represent the party or family or 189
household member of the party, divisions (A) and (B) of this 190
section do not apply until a successor lawyer assumes 191
representation of the party or family or household member of the 192
party or reasonable measures are taken to protect the health, 193
safety, welfare, or interests of the party or family or household 194

member of the party. 195

Sec. 3117.17. (A) The disqualification of a collaborative family lawyer under division (A) of section 3117.16 of the Revised Code applies to a collaborative family lawyer representing a party without fee. 196
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(B) After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative family lawyer is associated may represent the party without fee in the collaborative matter or a matter related to the collaborative matter if all of the following apply: 200
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(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. 205
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(2) The collaborative family law participation agreement so provides. 208
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(3) The collaborative family lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative family lawyer from participation in the collaborative matter or a matter related to the collaborative matter. 210
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Sec. 3117.18. (A) The disqualification of a collaborative family lawyer under division (A) of section 3117.16 of the Revised Code applies to a collaborative family lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality. 216
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(B) After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative family lawyer is associated may represent the government or governmental subdivision, agency, or instrumentality in the collaborative 221
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matter or a matter related to the collaborative matter if both of 225
the following apply: 226

(1) The collaborative family law participation agreement so 227
provides. 228

(2) The collaborative family lawyer is isolated from any 229
participation in the collaborative matter or matter related to the 230
collaborative matter through procedures within the law firm that 231
are reasonably calculated to isolate the collaborative family 232
lawyer from participation in the collaborative matter or matter 233
related to the collaborative matter. 234

Sec. 3117.19. During the collaborative family law process, at 235
the request of another party, a party shall make timely, full, 236
candid, and informal disclosure of information related to the 237
collaborative matter without formal discovery and shall update 238
promptly information that has materially changed. Parties may 239
define the scope of disclosure, except as otherwise provided by 240
law. 241

Sec. 3117.20. Sections 3117.11 to 3117.27 of the Revised Code 242
do not affect the professional responsibility obligations and 243
standards applicable to a lawyer or other licensed professional or 244
the statutory obligation of a person to report abuse or neglect of 245
a child or adult. 246

Sec. 3117.21. A collaborative family law communication is 247
confidential to the extent agreed by the parties in a signed 248
record or as provided by the law of this state. 249

Sec. 3117.22. (A) Subject to sections 3117.23 and 3117.24 of 250
the Revised Code, a collaborative family law communication is 251
privileged under division (B) of this section, is not subject to 252
discovery, and is not admissible in evidence. 253

<u>(B) In a proceeding, the following privileges apply:</u>	254
<u>(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication.</u>	255 256
<u>(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication of the nonparty participant.</u>	257 258 259
<u>(C) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a collaborative family law process.</u>	260 261 262 263
<u>Sec. 3117.23. (A) A privilege under section 3117.22 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.</u>	264 265 266 267 268
<u>(B) A person that discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding may not assert a privilege under section 3117.22 of the Revised Code relating to that communication.</u>	269 270 271 272
<u>Sec. 3117.24. (A) There is no privilege under section 3117.22 of the Revised Code for a collaborative family law communication that is any of the following:</u>	273 274 275
<u>(1) Available to the public under section 149.43 of the Revised 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;</u>	276 277 278 279
<u>(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;</u>	280 281
<u>(3) Intentionally used to plan a crime, commit or attempt to</u>	282

commit a crime, or conceal an ongoing crime or ongoing criminal activity; 283
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(4) In an agreement resulting from the collaborative family law process, evidenced by a record signed by all parties to the agreement. 285
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(B) The privileges under section 3117.22 of the Revised Code for a collaborative family law communication do not apply to the extent that a communication is either of the following: 288
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(1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process; 291
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(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless a children's or protective service agency or an adult protective services agency is a party to or otherwise participates in the collaborative family law process. 294
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(C) There is no privilege under section 3117.22 of the Revised Code if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in a criminal action or in a proceeding seeking rescission or reformation of a contract arising out of the collaborative family law process or in which a defense to avoid liability on the contract is asserted. 299
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(D) If a collaborative family law communication is subject to an exception under division (B) or (C) of this section, only the portion of the communication necessary for the application of the exception may be disclosed or admitted. 309
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(E) Disclosure or admission of evidence excepted from the 313

privilege under division (B) or (C) of this section does not 314
render the evidence or any other collaborative family law 315
communication discoverable or admissible for any other purpose. 316

(F) The privileges under section 3117.22 of the Revised Code 317
do not apply if the parties agree in advance in a signed record, 318
or if a record of a proceeding reflects agreement by the parties, 319
that all or part of a collaborative family law process is not 320
privileged. This division does not apply to a collaborative family 321
law communication made by a person that did not receive actual 322
notice of the agreement before the communication was made. 323

Sec. 3117.25. Even though a collaborative family law 324
participation agreement fails to meet the requirements of section 325
3117.13 of the Revised Code, a court may find that the parties 326
intended to enter into a collaborative family law participation 327
agreement if the parties signed a record indicating an intention 328
to enter into a collaborative family law participation agreement 329
and the parties reasonably believed they were participating in a 330
collaborative family law process. If a court makes such a finding, 331
sections 3117.11 to 3117.27 of the Revised Code apply to the same 332
extent as if the parties had entered into a valid collaborative 333
family law participation agreement. 334

Sec. 3117.26. Sections 3117.11 to 3117.27 of the Revised Code 335
modify, limit, and supersede the "Electronic Signatures in Global 336
and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001, et 337
seq., but do not modify, limit, or supersede section 101(c) of 338
that act, 15 U.S.C. 7001(c), or authorize electronic delivery of 339
any of the notices described in section 103(b) of that act, 15 340
U.S.C. 7003(b). 341

Sec. 3117.27. Sections 3117.11 to 3117.27 of the Revised Code 342
may be cited as the "Ohio collaborative family law act." 343