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Representative Stebelton

**Cosponsors: Representatives Adams, R., Gonzales, Grossman, Henne,
McGregor, Okey, Yuko, Bulp, Antonio, Boyd, Celeste, Combs, Huffman,
Letson, Milkovich, Murray, O'Brien, Pillich, Reece Speaker Batchelder
Senators Wagoner, Skindell, Obhof, Oelslager, Bacon, Turner**

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A B I L L

To amend sections 2317.02, 3105.18, and 3105.64 and 1
to enact sections 3105.41, 3105.42, 3105.43, 2
3105.44, 3105.45, 3105.46, 3105.47, 3105.48, 3
3105.49, 3105.50, 3105.51, 3105.52, 3105.53, and 4
3105.54 of the Revised Code to establish a 5
statutory collaborative family law process to aid 6
in the resolution of family law disputes, to 7
clarify when an order of spousal support may be 8
modified, and to clarify the circumstances under 9
which a client's statements may compel an attorney 10
to testify regarding attorney-client 11
communications. 12

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

Section 1. That sections 2317.02, 3105.18, and 3105.64 be 13
amended and sections 3105.41, 3105.42, 3105.43, 3105.44, 3105.45, 14
3105.46, 3105.47, 3105.48, 3105.49, 3105.50, 3105.51, 3105.52, 15
3105.53, and 3105.54 of the Revised Code be enacted to read as 16
follows: 17

Sec. 2317.02. The following persons shall not testify in 18
certain respects: 19

(A)(1) An attorney, concerning a communication made to the 20
attorney by a client in that relation or concerning the attorney's 21
advice to a client, except that the attorney may testify by 22
express consent of the client or, if the client is deceased, by 23
the express consent of the surviving spouse or the executor or 24
administrator of the estate of the deceased client. However, if 25
the client voluntarily ~~testifies~~ reveals the substance of 26
attorney-client communications in a nonprivileged context or is 27
deemed by section 2151.421 of the Revised Code to have waived any 28
testimonial privilege under this division, the attorney may be 29
compelled to testify on the same subject. 30

The testimonial privilege established under this division 31
does not apply concerning a communication between a client who has 32
since died and the deceased client's attorney if the communication 33
is relevant to a dispute between parties who claim through that 34
deceased client, regardless of whether the claims are by testate 35
or intestate succession or by inter vivos transaction, and the 36
dispute addresses the competency of the deceased client when the 37
deceased client executed a document that is the basis of the 38
dispute or whether the deceased client was a victim of fraud, 39
undue influence, or duress when the deceased client executed a 40
document that is the basis of the dispute. 41

(2) An attorney, concerning a communication made to the 42
attorney by a client in that relationship or the attorney's advice 43
to a client, except that if the client is an insurance company, 44
the attorney may be compelled to testify, subject to an in camera 45
inspection by a court, about communications made by the client to 46
the attorney or by the attorney to the client that are related to 47
the attorney's aiding or furthering an ongoing or future 48

commission of bad faith by the client, if the party seeking 49
disclosure of the communications has made a prima-facie showing of 50
bad faith, fraud, or criminal misconduct by the client. 51

(B)(1) A physician or a dentist concerning a communication 52
made to the physician or dentist by a patient in that relation or 53
the physician's or dentist's advice to a patient, except as 54
otherwise provided in this division, division (B)(2), and division 55
(B)(3) of this section, and except that, if the patient is deemed 56
by section 2151.421 of the Revised Code to have waived any 57
testimonial privilege under this division, the physician may be 58
compelled to testify on the same subject. 59

The testimonial privilege established under this division 60
does not apply, and a physician or dentist may testify or may be 61
compelled to testify, in any of the following circumstances: 62

(a) In any civil action, in accordance with the discovery 63
provisions of the Rules of Civil Procedure in connection with a 64
civil action, or in connection with a claim under Chapter 4123. of 65
the Revised Code, under any of the following circumstances: 66

(i) If the patient or the guardian or other legal 67
representative of the patient gives express consent; 68

(ii) If the patient is deceased, the spouse of the patient or 69
the executor or administrator of the patient's estate gives 70
express consent; 71

(iii) If a medical claim, dental claim, chiropractic claim, 72
or optometric claim, as defined in section 2305.113 of the Revised 73
Code, an action for wrongful death, any other type of civil 74
action, or a claim under Chapter 4123. of the Revised Code is 75
filed by the patient, the personal representative of the estate of 76
the patient if deceased, or the patient's guardian or other legal 77
representative. 78

(b) In any civil action concerning court-ordered treatment or 79

services received by a patient, if the court-ordered treatment or 80
services were ordered as part of a case plan journalized under 81
section 2151.412 of the Revised Code or the court-ordered 82
treatment or services are necessary or relevant to dependency, 83
neglect, or abuse or temporary or permanent custody proceedings 84
under Chapter 2151. of the Revised Code. 85

(c) In any criminal action concerning any test or the results 86
of any test that determines the presence or concentration of 87
alcohol, a drug of abuse, a combination of them, a controlled 88
substance, or a metabolite of a controlled substance in the 89
patient's whole blood, blood serum or plasma, breath, urine, or 90
other bodily substance at any time relevant to the criminal 91
offense in question. 92

(d) In any criminal action against a physician or dentist. In 93
such an action, the testimonial privilege established under this 94
division does not prohibit the admission into evidence, in 95
accordance with the Rules of Evidence, of a patient's medical or 96
dental records or other communications between a patient and the 97
physician or dentist that are related to the action and obtained 98
by subpoena, search warrant, or other lawful means. A court that 99
permits or compels a physician or dentist to testify in such an 100
action or permits the introduction into evidence of patient 101
records or other communications in such an action shall require 102
that appropriate measures be taken to ensure that the 103
confidentiality of any patient named or otherwise identified in 104
the records is maintained. Measures to ensure confidentiality that 105
may be taken by the court include sealing its records or deleting 106
specific information from its records. 107

(e)(i) If the communication was between a patient who has 108
since died and the deceased patient's physician or dentist, the 109
communication is relevant to a dispute between parties who claim 110
through that deceased patient, regardless of whether the claims 111

are by testate or intestate succession or by inter vivos 112
transaction, and the dispute addresses the competency of the 113
deceased patient when the deceased patient executed a document 114
that is the basis of the dispute or whether the deceased patient 115
was a victim of fraud, undue influence, or duress when the 116
deceased patient executed a document that is the basis of the 117
dispute. 118

(ii) If neither the spouse of a patient nor the executor or 119
administrator of that patient's estate gives consent under 120
division (B)(1)(a)(ii) of this section, testimony or the 121
disclosure of the patient's medical records by a physician, 122
dentist, or other health care provider under division (B)(1)(e)(i) 123
of this section is a permitted use or disclosure of protected 124
health information, as defined in 45 C.F.R. 160.103, and an 125
authorization or opportunity to be heard shall not be required. 126

(iii) Division (B)(1)(e)(i) of this section does not require 127
a mental health professional to disclose psychotherapy notes, as 128
defined in 45 C.F.R. 164.501. 129

(iv) An interested person who objects to testimony or 130
disclosure under division (B)(1)(e)(i) of this section may seek a 131
protective order pursuant to Civil Rule 26. 132

(v) A person to whom protected health information is 133
disclosed under division (B)(1)(e)(i) of this section shall not 134
use or disclose the protected health information for any purpose 135
other than the litigation or proceeding for which the information 136
was requested and shall return the protected health information to 137
the covered entity or destroy the protected health information, 138
including all copies made, at the conclusion of the litigation or 139
proceeding. 140

(2)(a) If any law enforcement officer submits a written 141
statement to a health care provider that states that an official 142

criminal investigation has begun regarding a specified person or 143
that a criminal action or proceeding has been commenced against a 144
specified person, that requests the provider to supply to the 145
officer copies of any records the provider possesses that pertain 146
to any test or the results of any test administered to the 147
specified person to determine the presence or concentration of 148
alcohol, a drug of abuse, a combination of them, a controlled 149
substance, or a metabolite of a controlled substance in the 150
person's whole blood, blood serum or plasma, breath, or urine at 151
any time relevant to the criminal offense in question, and that 152
conforms to section 2317.022 of the Revised Code, the provider, 153
except to the extent specifically prohibited by any law of this 154
state or of the United States, shall supply to the officer a copy 155
of any of the requested records the provider possesses. If the 156
health care provider does not possess any of the requested 157
records, the provider shall give the officer a written statement 158
that indicates that the provider does not possess any of the 159
requested records. 160

(b) If a health care provider possesses any records of the 161
type described in division (B)(2)(a) of this section regarding the 162
person in question at any time relevant to the criminal offense in 163
question, in lieu of personally testifying as to the results of 164
the test in question, the custodian of the records may submit a 165
certified copy of the records, and, upon its submission, the 166
certified copy is qualified as authentic evidence and may be 167
admitted as evidence in accordance with the Rules of Evidence. 168
Division (A) of section 2317.422 of the Revised Code does not 169
apply to any certified copy of records submitted in accordance 170
with this division. Nothing in this division shall be construed to 171
limit the right of any party to call as a witness the person who 172
administered the test to which the records pertain, the person 173
under whose supervision the test was administered, the custodian 174
of the records, the person who made the records, or the person 175

under whose supervision the records were made. 176

(3)(a) If the testimonial privilege described in division 177
(B)(1) of this section does not apply as provided in division 178
(B)(1)(a)(iii) of this section, a physician or dentist may be 179
compelled to testify or to submit to discovery under the Rules of 180
Civil Procedure only as to a communication made to the physician 181
or dentist by the patient in question in that relation, or the 182
physician's or dentist's advice to the patient in question, that 183
related causally or historically to physical or mental injuries 184
that are relevant to issues in the medical claim, dental claim, 185
chiropractic claim, or optometric claim, action for wrongful 186
death, other civil action, or claim under Chapter 4123. of the 187
Revised Code. 188

(b) If the testimonial privilege described in division (B)(1) 189
of this section does not apply to a physician or dentist as 190
provided in division (B)(1)(c) of this section, the physician or 191
dentist, in lieu of personally testifying as to the results of the 192
test in question, may submit a certified copy of those results, 193
and, upon its submission, the certified copy is qualified as 194
authentic evidence and may be admitted as evidence in accordance 195
with the Rules of Evidence. Division (A) of section 2317.422 of 196
the Revised Code does not apply to any certified copy of results 197
submitted in accordance with this division. Nothing in this 198
division shall be construed to limit the right of any party to 199
call as a witness the person who administered the test in 200
question, the person under whose supervision the test was 201
administered, the custodian of the results of the test, the person 202
who compiled the results, or the person under whose supervision 203
the results were compiled. 204

(4) The testimonial privilege described in division (B)(1) of 205
this section is not waived when a communication is made by a 206
physician to a pharmacist or when there is communication between a 207

patient and a pharmacist in furtherance of the physician-patient 208
relation. 209

(5)(a) As used in divisions (B)(1) to (4) of this section, 210
"communication" means acquiring, recording, or transmitting any 211
information, in any manner, concerning any facts, opinions, or 212
statements necessary to enable a physician or dentist to diagnose, 213
treat, prescribe, or act for a patient. A "communication" may 214
include, but is not limited to, any medical or dental, office, or 215
hospital communication such as a record, chart, letter, 216
memorandum, laboratory test and results, x-ray, photograph, 217
financial statement, diagnosis, or prognosis. 218

(b) As used in division (B)(2) of this section, "health care 219
provider" means a hospital, ambulatory care facility, long-term 220
care facility, pharmacy, emergency facility, or health care 221
practitioner. 222

(c) As used in division (B)(5)(b) of this section: 223

(i) "Ambulatory care facility" means a facility that provides 224
medical, diagnostic, or surgical treatment to patients who do not 225
require hospitalization, including a dialysis center, ambulatory 226
surgical facility, cardiac catheterization facility, diagnostic 227
imaging center, extracorporeal shock wave lithotripsy center, home 228
health agency, inpatient hospice, birthing center, radiation 229
therapy center, emergency facility, and an urgent care center. 230
"Ambulatory health care facility" does not include the private 231
office of a physician or dentist, whether the office is for an 232
individual or group practice. 233

(ii) "Emergency facility" means a hospital emergency 234
department or any other facility that provides emergency medical 235
services. 236

(iii) "Health care practitioner" has the same meaning as in 237
section 4769.01 of the Revised Code. 238

(iv) "Hospital" has the same meaning as in section 3727.01 of the Revised Code. 239
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(v) "Long-term care facility" means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; a residential facility licensed under section 5119.22 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 241
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(vi) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code. 252
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(d) As used in divisions (B)(1) and (2) of this section, "drug of abuse" has the same meaning as in section 4506.01 of the Revised Code. 254
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(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists. 257
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(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the 260
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Revised Code.	270
(C)(1) A cleric, when the cleric remains accountable to the	271
authority of that cleric's church, denomination, or sect,	272
concerning a confession made, or any information confidentially	273
communicated, to the cleric for a religious counseling purpose in	274
the cleric's professional character. The cleric may testify by	275
express consent of the person making the communication, except	276
when the disclosure of the information is in violation of a sacred	277
trust and except that, if the person voluntarily testifies or is	278
deemed by division (A)(4)(c) of section 2151.421 of the Revised	279
Code to have waived any testimonial privilege under this division,	280
the cleric may be compelled to testify on the same subject except	281
when disclosure of the information is in violation of a sacred	282
trust.	283
(2) As used in division (C) of this section:	284
(a) "Cleric" means a member of the clergy, rabbi, priest,	285
Christian Science practitioner, or regularly ordained, accredited,	286
or licensed minister of an established and legally cognizable	287
church, denomination, or sect.	288
(b) "Sacred trust" means a confession or confidential	289
communication made to a cleric in the cleric's ecclesiastical	290
capacity in the course of discipline enjoined by the church to	291
which the cleric belongs, including, but not limited to, the	292
Catholic Church, if both of the following apply:	293
(i) The confession or confidential communication was made	294
directly to the cleric.	295
(ii) The confession or confidential communication was made in	296
the manner and context that places the cleric specifically and	297
strictly under a level of confidentiality that is considered	298
inviolable by canon law or church doctrine.	299
(D) Husband or wife, concerning any communication made by one	300

to the other, or an act done by either in the presence of the 301
other, during coverture, unless the communication was made, or act 302
done, in the known presence or hearing of a third person competent 303
to be a witness; and such rule is the same if the marital relation 304
has ceased to exist; 305

(E) A person who assigns a claim or interest, concerning any 306
matter in respect to which the person would not, if a party, be 307
permitted to testify; 308

(F) A person who, if a party, would be restricted under 309
section 2317.03 of the Revised Code, when the property or thing is 310
sold or transferred by an executor, administrator, guardian, 311
trustee, heir, devisee, or legatee, shall be restricted in the 312
same manner in any action or proceeding concerning the property or 313
thing. 314

(G)(1) A school guidance counselor who holds a valid educator 315
license from the state board of education as provided for in 316
section 3319.22 of the Revised Code, a person licensed under 317
Chapter 4757. of the Revised Code as a professional clinical 318
counselor, professional counselor, social worker, independent 319
social worker, marriage and family therapist or independent 320
marriage and family therapist, or registered under Chapter 4757. 321
of the Revised Code as a social work assistant concerning a 322
confidential communication received from a client in that relation 323
or the person's advice to a client unless any of the following 324
applies: 325

(a) The communication or advice indicates clear and present 326
danger to the client or other persons. For the purposes of this 327
division, cases in which there are indications of present or past 328
child abuse or neglect of the client constitute a clear and 329
present danger. 330

(b) The client gives express consent to the testimony. 331

(c) If the client is deceased, the surviving spouse or the 332
executor or administrator of the estate of the deceased client 333
gives express consent. 334

(d) The client voluntarily testifies, in which case the 335
school guidance counselor or person licensed or registered under 336
Chapter 4757. of the Revised Code may be compelled to testify on 337
the same subject. 338

(e) The court in camera determines that the information 339
communicated by the client is not germane to the counselor-client, 340
marriage and family therapist-client, or social worker-client 341
relationship. 342

(f) A court, in an action brought against a school, its 343
administration, or any of its personnel by the client, rules after 344
an in-camera inspection that the testimony of the school guidance 345
counselor is relevant to that action. 346

(g) The testimony is sought in a civil action and concerns 347
court-ordered treatment or services received by a patient as part 348
of a case plan journalized under section 2151.412 of the Revised 349
Code or the court-ordered treatment or services are necessary or 350
relevant to dependency, neglect, or abuse or temporary or 351
permanent custody proceedings under Chapter 2151. of the Revised 352
Code. 353

(2) Nothing in division (G)(1) of this section shall relieve 354
a school guidance counselor or a person licensed or registered 355
under Chapter 4757. of the Revised Code from the requirement to 356
report information concerning child abuse or neglect under section 357
2151.421 of the Revised Code. 358

(H) A mediator acting under a mediation order issued under 359
division (A) of section 3109.052 of the Revised Code or otherwise 360
issued in any proceeding for divorce, dissolution, legal 361
separation, annulment, or the allocation of parental rights and 362

responsibilities for the care of children, in any action or 363
proceeding, other than a criminal, delinquency, child abuse, child 364
neglect, or dependent child action or proceeding, that is brought 365
by or against either parent who takes part in mediation in 366
accordance with the order and that pertains to the mediation 367
process, to any information discussed or presented in the 368
mediation process, to the allocation of parental rights and 369
responsibilities for the care of the parents' children, or to the 370
awarding of parenting time rights in relation to their children; 371

(I) A communications assistant, acting within the scope of 372
the communication assistant's authority, when providing 373
telecommunications relay service pursuant to section 4931.06 of 374
the Revised Code or Title II of the "Communications Act of 1934," 375
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 376
made through a telecommunications relay service. Nothing in this 377
section shall limit the obligation of a communications assistant 378
to divulge information or testify when mandated by federal law or 379
regulation or pursuant to subpoena in a criminal proceeding. 380

Nothing in this section shall limit any immunity or privilege 381
granted under federal law or regulation. 382

(J)(1) A chiropractor in a civil proceeding concerning a 383
communication made to the chiropractor by a patient in that 384
relation or the chiropractor's advice to a patient, except as 385
otherwise provided in this division. The testimonial privilege 386
established under this division does not apply, and a chiropractor 387
may testify or may be compelled to testify, in any civil action, 388
in accordance with the discovery provisions of the Rules of Civil 389
Procedure in connection with a civil action, or in connection with 390
a claim under Chapter 4123. of the Revised Code, under any of the 391
following circumstances: 392

(a) If the patient or the guardian or other legal 393
representative of the patient gives express consent. 394

(b) If the patient is deceased, the spouse of the patient or 395
the executor or administrator of the patient's estate gives 396
express consent. 397

(c) If a medical claim, dental claim, chiropractic claim, or 398
optometric claim, as defined in section 2305.113 of the Revised 399
Code, an action for wrongful death, any other type of civil 400
action, or a claim under Chapter 4123. of the Revised Code is 401
filed by the patient, the personal representative of the estate of 402
the patient if deceased, or the patient's guardian or other legal 403
representative. 404

(2) If the testimonial privilege described in division (J)(1) 405
of this section does not apply as provided in division (J)(1)(c) 406
of this section, a chiropractor may be compelled to testify or to 407
submit to discovery under the Rules of Civil Procedure only as to 408
a communication made to the chiropractor by the patient in 409
question in that relation, or the chiropractor's advice to the 410
patient in question, that related causally or historically to 411
physical or mental injuries that are relevant to issues in the 412
medical claim, dental claim, chiropractic claim, or optometric 413
claim, action for wrongful death, other civil action, or claim 414
under Chapter 4123. of the Revised Code. 415

(3) The testimonial privilege established under this division 416
does not apply, and a chiropractor may testify or be compelled to 417
testify, in any criminal action or administrative proceeding. 418

(4) As used in this division, "communication" means 419
acquiring, recording, or transmitting any information, in any 420
manner, concerning any facts, opinions, or statements necessary to 421
enable a chiropractor to diagnose, treat, or act for a patient. A 422
communication may include, but is not limited to, any 423
chiropractic, office, or hospital communication such as a record, 424
chart, letter, memorandum, laboratory test and results, x-ray, 425
photograph, financial statement, diagnosis, or prognosis. 426

(K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.

(2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true:

(a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger.

(b) The individual who received crisis response services gives express consent to the testimony.

(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.

(f) The communication or advice pertains or is related to any criminal act.

(3) As used in division (K) of this section:

(a) "Crisis response services" means consultation, risk

assessment, referral, and on-site crisis intervention services 457
provided by a critical incident stress management team to 458
individuals affected by crisis or disaster. 459

(b) "Critical incident stress management team member" or 460
"team member" means an individual specially trained to provide 461
crisis response services as a member of an organized community or 462
local crisis response team that holds membership in the Ohio 463
critical incident stress management network. 464

(c) "Debriefing session" means a session at which crisis 465
response services are rendered by a critical incident stress 466
management team member during or after a crisis or disaster. 467

(L)(1) Subject to division (L)(2) of this section and except 468
as provided in division (L)(3) of this section, an employee 469
assistance professional, concerning a communication made to the 470
employee assistance professional by a client in the employee 471
assistance professional's official capacity as an employee 472
assistance professional. 473

(2) Division (L)(1) of this section applies to an employee 474
assistance professional who meets either or both of the following 475
requirements: 476

(a) Is certified by the employee assistance certification 477
commission to engage in the employee assistance profession; 478

(b) Has education, training, and experience in all of the 479
following: 480

(i) Providing workplace-based services designed to address 481
employer and employee productivity issues; 482

(ii) Providing assistance to employees and employees' 483
dependents in identifying and finding the means to resolve 484
personal problems that affect the employees or the employees' 485
performance; 486

(iii) Identifying and resolving productivity problems	487
associated with an employee's concerns about any of the following	488
matters: health, marriage, family, finances, substance abuse or	489
other addiction, workplace, law, and emotional issues;	490
(iv) Selecting and evaluating available community resources;	491
(v) Making appropriate referrals;	492
(vi) Local and national employee assistance agreements;	493
(vii) Client confidentiality.	494
(3) Division (L)(1) of this section does not apply to any of	495
the following:	496
(a) A criminal action or proceeding involving an offense	497
under sections 2903.01 to 2903.06 of the Revised Code if the	498
employee assistance professional's disclosure or testimony relates	499
directly to the facts or immediate circumstances of the offense;	500
(b) A communication made by a client to an employee	501
assistance professional that reveals the contemplation or	502
commission of a crime or serious, harmful act;	503
(c) A communication that is made by a client who is an	504
unemancipated minor or an adult adjudicated to be incompetent and	505
indicates that the client was the victim of a crime or abuse;	506
(d) A civil proceeding to determine an individual's mental	507
competency or a criminal action in which a plea of not guilty by	508
reason of insanity is entered;	509
(e) A civil or criminal malpractice action brought against	510
the employee assistance professional;	511
(f) When the employee assistance professional has the express	512
consent of the client or, if the client is deceased or disabled,	513
the client's legal representative;	514
(g) When the testimonial privilege otherwise provided by	515

division (L)(1) of this section is abrogated under law. 516

Sec. 3105.18. (A) As used in this section, "spousal support" 517
means any payment or payments to be made to a spouse or former 518
spouse, or to a third party for the benefit of a spouse or a 519
former spouse, that is both for sustenance and for support of the 520
spouse or former spouse. "Spousal support" does not include any 521
payment made to a spouse or former spouse, or to a third party for 522
the benefit of a spouse or former spouse, that is made as part of 523
a division or distribution of property or a distributive award 524
under section 3105.171 of the Revised Code. 525

(B) In divorce and legal separation proceedings, upon the 526
request of either party and after the court determines the 527
division or disbursement of property under section 3105.171 of the 528
Revised Code, the court of common pleas may award reasonable 529
spousal support to either party. During the pendency of any 530
divorce, or legal separation proceeding, the court may award 531
reasonable temporary spousal support to either party. 532

An award of spousal support may be allowed in real or 533
personal property, or both, or by decreeing a sum of money, 534
payable either in gross or by installments, from future income or 535
otherwise, as the court considers equitable. 536

Any award of spousal support made under this section shall 537
terminate upon the death of either party, unless the order 538
containing the award expressly provides otherwise. 539

(C)(1) In determining whether spousal support is appropriate 540
and reasonable, and in determining the nature, amount, and terms 541
of payment, and duration of spousal support, which is payable 542
either in gross or in installments, the court shall consider all 543
of the following factors: 544

(a) The income of the parties, from all sources, including, 545

but not limited to, income derived from property divided,	546
disbursed, or distributed under section 3105.171 of the Revised	547
Code;	548
(b) The relative earning abilities of the parties;	549
(c) The ages and the physical, mental, and emotional	550
conditions of the parties;	551
(d) The retirement benefits of the parties;	552
(e) The duration of the marriage;	553
(f) The extent to which it would be inappropriate for a	554
party, because that party will be custodian of a minor child of	555
the marriage, to seek employment outside the home;	556
(g) The standard of living of the parties established during	557
the marriage;	558
(h) The relative extent of education of the parties;	559
(i) The relative assets and liabilities of the parties,	560
including but not limited to any court-ordered payments by the	561
parties;	562
(j) The contribution of each party to the education,	563
training, or earning ability of the other party, including, but	564
not limited to, any party's contribution to the acquisition of a	565
professional degree of the other party;	566
(k) The time and expense necessary for the spouse who is	567
seeking spousal support to acquire education, training, or job	568
experience so that the spouse will be qualified to obtain	569
appropriate employment, provided the education, training, or job	570
experience, and employment is, in fact, sought;	571
(l) The tax consequences, for each party, of an award of	572
spousal support;	573
(m) The lost income production capacity of either party that	574

resulted from that party's marital responsibilities; 575

(n) Any other factor that the court expressly finds to be 576
relevant and equitable. 577

(2) In determining whether spousal support is reasonable and 578
in determining the amount and terms of payment of spousal support, 579
each party shall be considered to have contributed equally to the 580
production of marital income. 581

(D) In an action brought solely for an order for legal 582
separation under section 3105.17 of the Revised Code, any 583
continuing order for periodic payments of money entered pursuant 584
to this section is subject to further order of the court upon 585
changed circumstances of either party. 586

(E) If a continuing order for periodic payments of money as 587
alimony is entered in a divorce or dissolution of marriage action 588
that is determined on or after May 2, 1986, and before January 1, 589
1991, or if a continuing order for periodic payments of money as 590
spousal support is entered in a divorce or dissolution of marriage 591
action that is determined on or after January 1, 1991, the court 592
that enters the decree of divorce or dissolution of marriage does 593
not have jurisdiction to modify the amount or terms of the alimony 594
or spousal support unless the court determines that the 595
circumstances of either party have changed and unless one of the 596
following applies: 597

(1) In the case of a divorce, the decree or a separation 598
agreement of the parties to the divorce that is incorporated into 599
the decree contains a provision specifically authorizing the court 600
to modify the amount or terms of alimony or spousal support. 601

(2) In the case of a dissolution of marriage, the separation 602
agreement that is approved by the court and incorporated into the 603
decree contains a provision specifically authorizing the court to 604
modify the amount or terms of alimony or spousal support. 605

(F)(1) For purposes of divisions (D) and (E) of this section 606
and subject to division (F)(2) of this section, a change in the 607
circumstances of a party includes, but is not limited to, any 608
increase or involuntary decrease in the party's wages, salary, 609
bonuses, living expenses, or medical expenses, or other changed 610
circumstances so long as both of the following apply: 611

(a) The change in circumstances is substantial and makes the 612
existing award no longer reasonable and appropriate. 613

(b) The change in circumstances was not taken into account by 614
the parties or the court as a basis for the existing award when it 615
was established or last modified, whether or not the change in 616
circumstances was foreseeable. 617

(2) In determining whether to modify an existing order for 618
spousal support, the court shall consider any purpose expressed in 619
the initial order or award and enforce any voluntary agreement of 620
the parties. Absent an agreement of the parties, the court shall 621
not modify the continuing jurisdiction of the court as contained 622
in the original decree. 623

(G) If any person required to pay alimony under an order made 624
or modified by a court on or after December 1, 1986, and before 625
January 1, 1991, or any person required to pay spousal support 626
under an order made or modified by a court on or after January 1, 627
1991, is found in contempt of court for failure to make alimony or 628
spousal support payments under the order, the court that makes the 629
finding, in addition to any other penalty or remedy imposed, shall 630
assess all court costs arising out of the contempt proceeding 631
against the person and shall require the person to pay any 632
reasonable attorney's fees of any adverse party, as determined by 633
the court, that arose in relation to the act of contempt. 634

Sec. 3105.41. As used in sections 3105.41 to 3105.54 of the 635
Revised Code: 636

(A) "Collaborative family law communication" means any statement that occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded and that is made for the purpose of conducting, participating in, continuing, or reconvening a collaborative law process.

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

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

(D) "Collaborative family lawyer" means a lawyer who represents a party in a collaborative family law process but does not include a lawyer who is a public official and who does not represent individuals other than public officials in their official capacities.

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

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

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

instrumentality. 668

(H) "Nonparty participant" means a person, other than a party and the party's collaborative family lawyer, that the parties expressly designate in writing, in a collaborative family law participation agreement or an amendment to that agreement, to participate in a collaborative family law process. 669
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(I) "Party" means a person that signs a collaborative family law participation agreement and whose consent is necessary to resolve a matter. 674
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(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. 677
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(K) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a court, including related prehearing and posthearing motions, conferences, and discovery. 682
683
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(L) "Public official" means an officer or employee of the state or any political subdivision of the state. 685
686

(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. 687
688
689

(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. 690
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(O) "Sign" means, with present intent to authenticate or adopt a record, to do either of the following: 694
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(1) Execute or adopt a tangible symbol; 696

(2) Attach to or logically associate with the record an 697

electronic symbol, sound, or process. 698

Sec. 3105.42. (A) Sections 3105.41 to 3105.54 of the Revised Code apply to a collaborative family law participation agreement that meets the requirements of section 3105.43 of the Revised Code and is signed on or after the effective date of this section. 699
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(B) A court may not order a party to participate in a collaborative family law process over that party's objection. 703
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Sec. 3105.43. (A) A collaborative family law participation agreement must be in a record, be signed by the parties, and include all of the following: 705
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(1) A statement of the parties' intent to resolve a matter through a collaborative family law process under sections 3105.41 to 3105.55 of the Revised Code; 708
709
710

(2) A description of the nature and scope of the matter; 711

(3) The identity of the collaborative family lawyer who represents each party in the collaborative family law process; 712
713

(4) A statement by each collaborative family lawyer confirming the lawyer's representation of a party in the collaborative family law process. 714
715
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(B) Parties to a collaborative family law participation agreement may agree to include additional provisions not inconsistent with sections 3105.41 to 3105.54 of the Revised Code. 717
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Sec. 3105.44. (A) A collaborative family law process begins when the parties sign a collaborative family law participation agreement. 720
721
722

(B) A collaborative family law process is concluded by any of the following: 723
724

(1) A negotiated resolution of the matter as evidenced by a 725

<u>signed record;</u>	726
<u>(2) A negotiated resolution of a portion of the matter as</u>	727
<u>evidenced by a signed record in which the parties agree that the</u>	728
<u>remaining portions of the matter will not be resolved in the</u>	729
<u>collaborative family law process;</u>	730
<u>(3) Termination of the process under division (C) of this</u>	731
<u>section.</u>	732
<u>(C) A collaborative family law process terminates when any of</u>	733
<u>the following occurs:</u>	734
<u>(1) A party gives notice in a record that the collaborative</u>	735
<u>family law process is ended.</u>	736
<u>(2) A party does either of the following:</u>	737
<u>(a) Begins a proceeding related to the collaborative family</u>	738
<u>law matter without the agreement of all parties;</u>	739
<u>(b) In a pending proceeding related to the collaborative</u>	740
<u>family law matter, does any of the following:</u>	741
<u>(i) Initiates a pleading, motion, order to show cause, or</u>	742
<u>request for a conference with the court;</u>	743
<u>(ii) Requests that the proceeding be put on the court's</u>	744
<u>docket;</u>	745
<u>(iii) Takes similar action requiring notice to be sent to the</u>	746
<u>parties;</u>	747
<u>(iv) Except as otherwise provided by division (E)(2) of this</u>	748
<u>section, discharges a collaborative family lawyer.</u>	749
<u>(3) A collaborative family lawyer withdraws from further</u>	750
<u>representation of a party.</u>	751
<u>(4) Termination occurs in any other way provided for in the</u>	752
<u>collaborative family law participation agreement.</u>	753
<u>(D) A party may terminate a collaborative family law process</u>	754

with or without cause. A notice of termination need not specify a 755
reason for terminating the process. 756

(E)(1) A collaborative family lawyer who is discharged or who 757
withdraws shall give prompt notice in a record of the discharge or 758
withdrawal to all other parties. 759

(2) Notwithstanding the discharge or withdrawal of a 760
collaborative family lawyer, a collaborative family law process 761
continues if the unrepresented party engages a successor 762
collaborative family lawyer, and, in a signed record, all parties 763
consent to continue the process by reaffirming the collaborative 764
family law participation agreement, the collaborative family law 765
participation agreement is amended to identify the successor 766
collaborative family lawyer, and the successor collaborative 767
family lawyer confirms the lawyer's representation of a party in 768
the collaborative family law process. 769

(F) A collaborative family law process does not terminate if, 770
with the consent of all parties, a party requests a court to 771
approve a negotiated resolution of the matter or any portion of 772
the matter as evidenced by a signed record. 773

Sec. 3105.45. (A) Except as otherwise provided in division 774
(C) of this section, a collaborative family lawyer may not appear 775
before a court to represent a party in a proceeding related to the 776
collaborative family law matter. A collaborative family lawyer 777
representing a party that is a government or governmental 778
subdivision, agency, or instrumentality is subject to 779
disqualification under this division. 780

(B) Except as otherwise provided in division (C) of this 781
section, a lawyer in a law firm with which the collaborative 782
family lawyer is associated may not appear before a court to 783
represent a party in a proceeding related to the collaborative 784
family law matter if the collaborative family lawyer is 785

disqualified from doing so under division (A) of this section. 786

(C) A collaborative family lawyer or a lawyer in a law firm 787
with which the collaborative family lawyer is associated may 788
represent a party for the following purposes: 789

(1) To ask a court to approve an agreement resulting from the 790
collaborative family law process; 791

(2) To seek or defend an emergency order to protect the 792
health, safety, welfare, or interests of a party or of a family or 793
household member of a party if a successor lawyer is not 794
immediately available to represent the party or family or 795
household member of the party. If a successor lawyer is not 796
immediately available to represent the party or family or 797
household member of the party, divisions (A) and (B) of this 798
section do not apply until a successor lawyer assumes 799
representation of the party or family or household member of the 800
party or reasonable measures are taken to protect the health, 801
safety, welfare, or interests of the party or family or household 802
member of the party. 803

Sec. 3105.46. During the collaborative family law process, at 804
the request of another party, a party shall make timely, full, 805
candid, and informal disclosure of information related to the 806
collaborative matter without formal discovery and shall update 807
promptly information that has materially changed. Parties may 808
define the scope of disclosure, except as otherwise provided by 809
law. 810

Sec. 3105.47. Sections 3105.41 to 3105.54 of the Revised Code 811
do not affect the professional responsibility obligations and 812
standards applicable to a lawyer or other licensed professional or 813
the statutory obligation of a person to report abuse or neglect of 814
a child or adult. 815

Sec. 3105.48. A collaborative family law communication is 816
confidential to the extent agreed by the parties in a signed 817
record or as provided by the law of this state. 818

Sec. 3105.49. (A) Subject to sections 3105.50 and 3105.51 of 819
the Revised Code, a collaborative family law communication is 820
privileged under division (B) of this section, is not subject to 821
discovery, and is not admissible in evidence. 822

(B) In a proceeding, the following privileges apply: 823

(1) A party may refuse to disclose, and may prevent any other 824
person from disclosing, a collaborative family law communication. 825

(2) A nonparty participant may refuse to disclose, and may 826
prevent any other person from disclosing, a collaborative family 827
law communication of the nonparty participant. 828

(C) Evidence or information that is otherwise admissible or 829
subject to discovery does not become inadmissible or protected 830
from discovery solely by reason of its disclosure or use in a 831
collaborative family law process. 832

Sec. 3105.50. (A) A privilege under section 3105.49 of the 833
Revised Code may be waived in a record or orally during a 834
proceeding if it is expressly waived by all parties and, in the 835
case of the privilege of a nonparty participant, it is also 836
expressly waived by the nonparty participant. 837

(B) A person that discloses or makes a representation about a 838
collaborative family law communication that prejudices another 839
person in a proceeding may not assert a privilege under section 840
3105.49 of the Revised Code relating to that communication. 841

Sec. 3105.51. (A) There is no privilege under section 3105.49 842
of the Revised Code for a collaborative family law communication 843

that is any of the following: 844

(1) Available to the public under section 149.43 of the 845
Revised Code or made during a session of a collaborative family 846
law process that is open, or is required by law to be open, to the 847
public; 848

(2) A threat or statement of a plan to inflict bodily injury 849
or commit a crime of violence; 850

(3) Intentionally used to plan a crime, commit or attempt to 851
commit a crime, or conceal an ongoing crime or ongoing criminal 852
activity; 853

(4) In an agreement resulting from the collaborative family 854
law process, evidenced by a record signed by all parties to the 855
agreement. 856

(B) The privileges under section 3105.49 of the Revised Code 857
for a collaborative family law communication do not apply to the 858
extent that a communication is either of the following: 859

(1) Sought or offered to prove or disprove a claim or 860
complaint of professional misconduct or malpractice arising from 861
or related to a collaborative family law process; 862

(2) Sought or offered to prove or disprove abuse, neglect, 863
abandonment, or exploitation of a child, unless a children's or 864
protective service agency or an adult protective services agency 865
is a party to or otherwise participates in the collaborative 866
family law process. 867

(C) There is no privilege under section 3105.49 of the 868
Revised Code if the communication is sought in connection with or 869
offered in any criminal proceeding involving a felony, a 870
delinquent child proceeding based on what would be a felony if 871
committed by an adult, or a proceeding initiated by the state or a 872
child protection agency in which it is alleged that a child is an 873

abused, neglected, or dependent child. 874

(D) There is no privilege under section 3105.49 of the 875
Revised Code if a court finds, after a hearing in camera, that the 876
party seeking discovery or the proponent of the evidence has shown 877
that the evidence is not otherwise available, the need for the 878
evidence substantially outweighs the interest in protecting 879
confidentiality, and the collaborative family law communication is 880
sought or offered in a criminal action or in a proceeding seeking 881
rescission or reformation of a contract arising out of the 882
collaborative family law process or in which a defense to avoid 883
liability on the contract is asserted. 884

(E) If a collaborative family law communication is subject to 885
an exception under division (B), (C), or (D) of this section, only 886
the portion of the communication necessary for the application of 887
the exception may be disclosed or admitted. 888

(F) Disclosure or admission of evidence excepted from the 889
privilege under division (B), (C), or (D) of this section does not 890
render the evidence or any other collaborative family law 891
communication discoverable or admissible for any other purpose. 892

(G) The privileges under section 3105.49 of the Revised Code 893
do not apply if the parties agree in advance in a signed record, 894
or if a record of a proceeding reflects agreement by the parties, 895
that all or part of a collaborative family law process is not 896
privileged. This division does not apply to a collaborative family 897
law communication made by a person that did not receive actual 898
notice of the agreement before the communication was made. 899

Sec. 3105.52. Even though a collaborative family law 900
participation agreement fails to meet the requirements of section 901
3105.43 of the Revised Code, a court may find that the parties 902
intended to enter into a collaborative family law participation 903
agreement if the parties signed a record indicating an intention 904

to enter into a collaborative family law participation agreement 905
and the parties reasonably believed they were participating in a 906
collaborative family law process. If a court makes such a finding, 907
sections 3105.41 to 3105.54 of the Revised Code apply to the same 908
extent as if the parties had entered into a valid collaborative 909
family law participation agreement. 910

Sec. 3105.53. Sections 3105.41 to 3105.54 of the Revised Code 911
modify, limit, and supersede the "Electronic Signatures in Global 912
and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001, et 913
seq., but do not modify, limit, or supersede section 101(c) of 914
that act, 15 U.S.C. 7001(c), or authorize electronic delivery of 915
any of the notices described in section 103(b) of that act, 15 916
U.S.C. 7003(b). 917

Sec. 3105.54. Sections 3105.41 to 3105.54 of the Revised Code 918
may be cited as the "Ohio collaborative family law act." 919

Sec. 3105.64. (A) Except as provided in division (B) or (C) 920
of this section, not less than thirty nor more than ninety days 921
after the filing of a petition for dissolution of marriage, both 922
spouses shall appear before the court, and each spouse shall 923
acknowledge under oath that ~~he has~~ that spouse voluntarily entered 924
into the separation agreement appended to the petition, that ~~he~~ 925
that spouse is satisfied with its terms, and that ~~he~~ that spouse 926
seeks dissolution of the marriage. 927

(B) If an action for divorce is converted to an action for 928
dissolution of marriage pursuant to section 3105.08 of the Revised 929
Code and if the conversion occurs more than thirty days after the 930
filing of the original petition in the divorce action, the 931
appearance and acknowledgement requirements of division (A) of 932
this section may be satisfied at the time of the conversion or at 933

a time that is not more than ninety days after the conversion. 934

(C) If a petition for dissolution is filed after the spouses 935
have successfully completed a collaborative family law process 936
pursuant to sections 3105.41 to 3105.54 of the Revised Code, the 937
appearance and acknowledgement requirements of division (A) of 938
this section may be satisfied at any time that is not more than 939
ninety days after the filing of the petition. 940

Section 2. That existing sections 2317.02, 3105.18, and 941
3105.64 of the Revised Code are hereby repealed. 942

Section 3. (A) The General Assembly acknowledges the Ohio 943
Supreme Court's authority in prescribing rules governing the rules 944
of conduct for practicing attorneys in this state, as provided by 945
Section 5 of Article IV of the Ohio Constitution. 946

(B)(1) The General Assembly hereby respectfully requests the 947
Ohio Supreme Court to amend the Rules of Professional 948
Responsibility to require a collaborative family lawyer to 949
disclose to clients in writing as part of a collaborative family 950
law participation agreement both of the following: 951

(a) Information regarding the withdrawal and disqualification 952
of the attorneys pursuant to section 3145.46 of the Revised Code 953
should a settlement not be possible; 954

(b) Information about other available options for resolution 955
or determination of family law matters. 956

(2) The goal of the disclosures under division (B)(1) of this 957
section should be to ensure that clients make fully informed 958
decisions about all available options. 959

(C) As used in this section, "collaborative family law 960
participation agreement" has the same meaning as in section 961
3105.41 of the Revised Code. 962

Section 4. The proposed changes made by this act to section 963
3105.18 of the Revised Code are intended to abrogate *Mandelbaum v.* 964
Mandelbaum (2009), 121 Ohio St.3d 433. Specifically, the proposed 965
changes clarify (1) that "a change in circumstances" must be 966
"substantial" so as to make the existing award no longer 967
reasonable or appropriate; and (2) that the "change in 968
circumstances" must be circumstances that were not taken into 969
account by the parties or the court when the award was set or last 970
modified, whether or not such circumstances were otherwise 971
contemplated or foreseeable. The proposed changes are also 972
intended to specify that cohabitation or retirement and other 973
events may constitute a change in circumstances and to give courts 974
guidance so that courts must consider any purpose expressed in the 975
initial order or award, enforce any voluntary agreement of the 976
parties, and only modify the continuing jurisdiction of the court 977
as contained in the original decree if the parties agree. 978