CHAPTER 679C

MEDIATION

Referred to in §357A.21, §523A.804, §598.7

Former ch 679C repealed by 2005 Acts, ch 68, §21

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679C.101 Short title.

This chapter shall be known as the *"Uniform Mediation Act"*.

2005 Acts, ch 68, §6

679C.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Mediation"* means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

2. *"Mediation communication"* means a statement, whether oral or in a record, verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

3. *"Mediation party"* means an individual who participates in a mediation and whose agreement is necessary to resolve the dispute.

4. *"Mediator"* means an individual who conducts a mediation.

5. *"Nonparty participant"* means a person, other than a mediation party or mediator, that participates in a mediation.

6. *"Person"* means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

7. *"Proceeding"* means any of the following:

a. A judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery.

b. A legislative hearing or similar process.

8. *"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.

9. *"Sign"* means any of the following:

a. To execute or adopt a tangible symbol with the present intent to authenticate a record.

b. To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

2005 Acts, ch 68, §7

Referred to in §22.7

679C.103 Scope.

1. Except as otherwise provided for in subsections 2 and 3, this chapter applies to a mediation that occurs under any of the following circumstances:

a. The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator.

b. The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure.

c. The mediation parties use as a mediator a person who holds oneself out as a mediator or the mediation is provided by a person who holds oneself out as providing mediation.

2. This chapter shall not apply to a mediation relating to or conducted under any of the following circumstances:

a. Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship.

b. Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court.

c. Conducted by a judge who might make a ruling on the case.

d. Conducted at any of the following:

(1) A primary or secondary school if all the parties are students.

(2) A correctional institution for youths if all the parties are residents of that institution.

3. If the mediation parties agree in advance in a signed record, or a record of proceeding reflects agreement by the mediation parties, that all or part of a mediation is not privileged, the privileges under sections 679C.104 through 679C.106 do not apply to the mediation or part agreed upon. However, sections 679C.104 through 679C.106 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

2005 Acts, ch 68, §8; 2006 Acts, ch 1010, §157

679C.104 Privilege against disclosure — admissibility — discovery.

1. Except as otherwise provided in section 679C.106, a mediation communication is privileged as provided in subsection 2 and is not subject to discovery or admissible in evidence in a proceeding unless the privilege is waived or precluded as provided by section 679C.105.

2. In a proceeding, the following privileges shall apply:

a. A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

b. A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

c. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

3. 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 mediation.

2005 Acts, ch 68, §9; 2006 Acts, ch 1010, §158

Referred to in **§679C.103**, **§679C.105**, **§679C.106**, **§679C.109**

679C.105 Waiver and preclusion of privilege.

1. A privilege under section 679C.104 may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and if all of the following apply:

a. In the case of the privilege of a mediator, the privilege is expressly waived by the mediator.

b. In the case of the privilege of a nonparty participant, the privilege is expressly waived by the nonparty participant.

2. A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 679C.104, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

3. A person that intentionally uses a mediation to plan, to attempt to commit, or to commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege pursuant to section 679C.104.

2005 Acts, ch 68, §10

Referred to in **§679C.103**, **§679C.104**

679C.106 Exceptions to privilege.

1. No privilege exists under section 679C.104 for a mediation communication that involves any of the following:

a. An agreement evidenced by a record signed by all mediation parties to the agreement.

b. A communication that is available to the public under chapter 22 or made during a session of a mediation which is open, or is required by law to be open, to the public.

c. A threat or statement of a plan to inflict bodily injury or commit a crime of violence.

d. A plan to commit or attempt to commit a crime, the commission of a crime, or activity to conceal an ongoing crime or ongoing criminal activity.

e. A communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

f. Except as otherwise provided in subsection 3, a communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a mediation party based on conduct occurring during a mediation.

g. A communication that is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the child or adult protection case is referred by a court to mediation and a public agency participates.

2. There is no privilege under section 679C.104 if a court, administrative agency, or arbitrator 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, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in any of the following situations:

a. A court proceeding involving a felony or misdemeanor.

b. Except as otherwise provided in subsection 3, a proceeding to prove a claim to rescind or reform a contract or a defense to avoid liability on a contract arising out of the mediation.

3. A mediator shall not be compelled to provide evidence of a mediation communication referred to in subsection 1, paragraph "*f*", or subsection 2, paragraph "*b*".

4. If a mediation communication is not privileged under subsection 1 or 2, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection 1 or 2 does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

2005 Acts, ch 68, §11

Referred to in **§679C.103**, **§679C.104**, **§679C.107**

679C.107 Prohibited mediator reports.

1. Except as required in subsection 2, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

2. A mediator may disclose any of the following:

a. Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance.

b. A mediation communication as permitted under section 679C.106.

c. A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

3. A communication made in violation of subsection 1 shall not be considered by a court, administrative agency, or arbitrator.

2005 Acts, ch 68, §12

679C.108 Confidentiality.

Unless subject to chapter 21 or 22, mediation communications are confidential to the extent agreed to by the parties or provided by other law or rule of this state.

2005 Acts, ch 68, §13

Referred to in **§13.14**, **§216.15B**, **§654A.13**

679C.109 Mediator's disclosure of conflicts of interest — background.

1. Before accepting a mediation, an individual who is requested to serve as a mediator shall do all of the following:

a. Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation.

b. Disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

2. If a mediator learns any fact described in subsection 1 after accepting a mediation, the mediator shall disclose it as soon as is practicable.

3. At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

4. A person that violates subsection 1, 2, or 7 is precluded by the violation from asserting a privilege under section 679C.104.

5. Subsections 1, 2, 3, and 7 do not apply to an individual acting as a judge.

6. This chapter does not require that a mediator have a special qualification by background or profession.

7. A mediator must be impartial, unless after disclosure of the facts required in subsections 1, 2, and 3 to be disclosed, the parties agree otherwise.

2005 Acts, ch 68, §14; 2006 Acts, ch 1030, §79

679C.110 Participation in mediation.

An attorney or other individual designated by a mediation party may accompany the mediation party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

2005 Acts, ch 68, §15

679C.111 Relation to Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter modify or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but this chapter does not modify, limit, or supersede section 101c of that Act or authorize electronic delivery of any of the notices described in section 103b of that Act.

2005 Acts, ch 68, §16

679C.112 Uniformity of application and construction.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law among states that enact the uniform mediation Act.

2005 Acts, ch 68, §17

679C.113 Severability clause.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

2005 Acts, ch 68, §18

679C.114 Application to existing agreements or referrals.

1. This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after July 1, 2005.

2. On or after July 1, 2005, this chapter governs an agreement to mediate whenever made.

2005 Acts, ch 68, §19

679C.115 Mediator immunity.

A mediator or a mediation program shall not be liable for civil damages for a statement, decision, or omission made in the process of mediation unless the act or omission by the mediator or mediation program is made in bad faith, with malicious purpose, or in a manner exhibiting willful or wanton disregard of human rights, safety, or property. This section shall apply to mediation conducted before the workers' compensation commissioner and mediation conducted pursuant to chapter 216.

2005 Acts, ch 68, §20