

JAN 23 1998
JUDICIARY

HOUSE FILE 2083
BY CHAPMAN

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for court-referred mediation, and related
2 standards and procedures.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2083

1 Section 1. NEW SECTION. 679D.1 DEFINITIONS.

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

4 1. "Mediation" means a process in which an impartial
5 person facilitates the resolution of a dispute by promoting
6 voluntary agreement of the parties to the dispute. In a
7 mediation, the decision-making authority rests with the
8 parties. A mediation commences at the time of initial contact
9 with a mediator or mediation program and includes all contacts
10 between the mediator or a mediation program and any party
11 until such time as a resolution is reached by the parties or
12 the mediation process concludes.

13 2. "Mediation communication" means any communication or
14 behavior in connection with a mediation by or between any
15 party, mediator, mediation program, or any other person
16 present during a mediation.

17 3. "Mediation document" means any written material,
18 including copies of written material, prepared for the purpose
19 of or in the course of, or pursuant to, a mediation,
20 including, but not limited to, memoranda, notes, files,
21 records, and work product of a mediator, mediation program, or
22 party, except that a "mediation document" shall not include
23 either of the following:

24 a. An agreement by the parties which specifies that the
25 mediation documents may be disclosed or enforced.

26 b. Summary records of a mediation program necessary to
27 evaluate or monitor the performance of the program.

28 4. "Mediation program" means a plan or organization
29 through which mediators and mediations may be provided.

30 5. "Mediator" means an impartial person who facilitates
31 the resolution of a dispute between parties in the mediation
32 process.

33 6. "Party" means a mediation participant other than the
34 mediator and may be a person, public officer, corporation,
35 association, or other organization or entity, either public or

1 private.

2 Sec. 2. NEW SECTION. 679D.2 INITIATION OF MEDIATION.

3 1. A district court may, on its own motion or by motion of
4 any or all parties, refer a case pending before the court to
5 mediation under this chapter if the court determines that the
6 matter is appropriate for resolution by mediation. The court
7 may refer a case to mediation at any time prior to the
8 entering of a final order or the granting of a final decree.

9 2. The court shall, by written order to all parties,
10 notify the parties of its determination to refer the matter to
11 mediation. The order shall provide for all of the following:

12 a. Appointment of a mediator who meets the requirements in
13 section 679D.3.

14 b. The maximum number of days that the mediation may
15 continue, based upon the relative complexity of the issues
16 involved in the case, or other time parameters within which
17 the mediation is to operate.

18 3. Extensions of time for mediation may be granted by the
19 court, upon application to the court by any party in advance
20 of the expiration of the time for mediation.

21 4. Within ten days after the issuance of the court order
22 under this section, any party may file a written objection to
23 the referral that details the reasons for the objection. If
24 the court finds that the objection establishes a reasonable
25 basis for concluding that mediation would not be an
26 appropriate method for resolving the case, the court shall
27 rescind its order for mediation.

28 5. An initial mediation session shall be held no earlier
29 than twenty days, but not later than fifty days, after the
30 date of the original order for mediation, unless otherwise
31 agreed by all parties.

32 Sec. 3. NEW SECTION. 679D.3 MEDIATOR QUALIFICATIONS AND
33 DUTIES.

34 1. a. Prior to providing court-referred mediation
35 services, a mediator shall complete a minimum of forty hours

1 of classroom training in dispute resolution techniques in a
2 course or courses conducted by dispute resolution
3 organizations approved by the judicial council, with the
4 assistance of the state court administrator.

5 b. In addition to the requirements in paragraph "a", a
6 mediator shall complete an additional twenty-four hours of
7 training in the fields of family dynamics, child development,
8 and family law prior to providing mediation services in a case
9 relating to a parent-child relationship.

10 2. Notwithstanding the requirements of subsection 1, a
11 court may, in its discretion, appoint a mediator who does not
12 meet the qualifications in subsection 1 if the court bases its
13 appointment on other training or experience of the mediator
14 that would be beneficial to resolution of the case.

15 3. A court-appointed mediator shall encourage and assist
16 the parties to the case in reaching a mutually acceptable
17 resolution of their dispute through discussion and
18 negotiation. The mediator shall not compel or coerce the
19 parties into entering into a settlement agreement. The
20 mediator shall have no authority to make or impose any
21 agreement, adjudication, sanction, or penalty upon the
22 parties.

23 4. The mediator shall abide by the standards for
24 confidentiality in chapter 679C, if enacted by the general
25 assembly, and shall be immune from civil liability according
26 to the provisions of section 679C.4, if enacted by the general
27 assembly.

28 5. The mediator shall terminate the mediation process when
29 the mediator determines that the parties are unable to agree,
30 or when the time frame for mediation established by the court
31 has expired, and no extension has been granted. The parties
32 shall sign a statement certifying to the court that the
33 parties have been unable to reach agreement. The termination
34 of mediation shall be without prejudice to any party to the
35 proceeding.

1 Sec. 4. NEW SECTION. 679D.4 COMPENSATION OF MEDIATOR.

2 1. The parties to a case shall bear the costs for a court-
3 appointed mediator equally. However, if the court determines
4 that a party is unable to pay that party's share of the costs,
5 the party shall be charged based upon ability to pay,
6 according to a sliding scale. No party shall be ordered to
7 pay more than their share of the costs of mediation.

8 2. The supreme court may set a reasonable daily fee for
9 the services of a mediator appointed under this chapter and
10 may establish a sliding scale for payment of costs based upon
11 a party's ability to pay.

12 Sec. 5. NEW SECTION. 679D.5 REPRESENTATION BY AN
13 ATTORNEY.

14 A party participating in a mediation under this chapter
15 shall have the right to be represented and advised by an
16 attorney during the course of mediation.

17 Sec. 6. NEW SECTION. 679D.6 EFFECT OF MEDIATION.

18 1. If the parties to a case reach a settlement during
19 court-referred mediation and execute a written settlement
20 agreement, the agreement is enforceable and may be utilized by
21 the court in the same manner as any other written settlement
22 agreement.

23 2. The court may, with agreement of all parties,
24 incorporate the terms of the settlement agreement into the
25 court's final decree.

26 3. A settlement agreement does not affect an outstanding
27 court order unless the terms of the agreement address the
28 outstanding order and are incorporated into a subsequent
29 decree.

30 4. Participation in mediation under this chapter shall not
31 toll any applicable statute of limitations.

32 5. Participation in mediation under this chapter shall not
33 toll the running of any other time period under the rules of
34 civil procedure unless so ordered by the court.

35 Sec. 7. NEW SECTION. 679D.7 RELATION TO OTHER LAWS.

1 1. This chapter shall apply to court-referred mediation in
2 domestic relations cases to the extent that this chapter is
3 not inconsistent with section 598.7A.

- 4 2. This chapter shall not apply to any proceeding:
5 a. Conducted under chapter 654A, 654B, or 654C.
6 b. Regarding compensation issues under chapter 20 or 86.
7 c. Conducted in accordance with chapter 216.

8 Sec. 8. NEW SECTION. 679D.8 FORMS AND RULES.

9 The supreme court may establish rules, procedures, and
10 forms consistent with this chapter, including establishing a
11 procedure for identifying and listing qualified mediators,
12 setting reasonable mediator's fees, and establishing a sliding
13 scale for payment of mediator's fees by persons unable to pay.

14 EXPLANATION

15 This bill creates a new Code chapter 679D regulating court-
16 referred mediation.

17 New Code section 679D.1 provides definitions for new Code
18 chapter 679D.

19 New Code section 679D.2 provides that at any time prior to
20 a final order or decree, a court may refer a pending case to
21 mediation upon its own motion or upon the motion of any party,
22 if the court determines that the case is appropriate for
23 resolution by mediation. The court shall issue a written
24 order to all parties appointing a mediator who meets certain
25 requirements as provided in new Code section 679D.3, and
26 establishing the time parameters for the mediation process.
27 Any party may object in writing to the referral to mediation
28 within 10 days, and if the objection establishes a reasonable
29 basis for concluding that mediation would not be appropriate
30 for resolving the case, the court shall not refer the case to
31 mediation. The mediation may start according to a date agreed
32 to by the parties, or otherwise between 20 and 50 days after
33 the order for mediation.

34 New Code section 679D.3 provides the minimum qualifications
35 for a court-appointed mediator, including additional

1 requirements for mediators in cases involving a parent-child
2 relationship. A court may appoint a mediator who does not
3 meet the specified qualifications if the court believes the
4 person possesses special knowledge or experience that would be
5 beneficial to the resolution of the case. The mediator shall
6 assist the parties in reaching agreement, but shall not coerce
7 or impose an agreement or penalty on the parties. The
8 mediator shall abide by the confidentiality standards in Code
9 chapter 679C, as proposed in House File 2025, if enacted. The
10 mediator shall terminate the mediation when the mediator
11 determines the parties cannot reach agreement, or when the
12 time for mediation has expired. Termination shall not
13 prejudice the position of any party to the case.

14 The parties shall bear the costs of mediation equally. Any
15 party participating in a mediation may be represented by an
16 attorney. Participation in mediation does not toll any
17 applicable statute of limitations, and tolls any other period
18 provided for in the rules of civil procedure only if so
19 ordered by the court.

20 A written settlement agreement reached during mediation
21 shall be utilized in the same manner as any other written
22 settlement agreement.

23 New Code section 679D.7 provides that new Code chapter 679
24 does not apply to determining which domestic relations cases
25 are appropriate for mediation under Code section 598.7A, and
26 does not apply to certain mediations regulated by other
27 chapters.

28 The supreme court is authorized to set a daily fee for
29 mediators, and to establish rules, procedures, and forms
30 consistent with the provisions of the new Code chapter,
31 including a procedure for identifying and listing qualified
32 mediators, and establishing a sliding scale for payment of
33 mediation costs by persons unable to pay.

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