

FEB 4 1998
JUDICIARY

HOUSE FILE 2139
BY TYRRELL

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

A BILL FOR

1 An Act providing for confidentiality of communications and
2 documents in mediations conducted in domestic relations
3 actions, and for a limitation of civil liability of the
4 mediator.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

HF 2139

1 Section 1. NEW SECTION. 598.7B MEDIATION

2 CONFIDENTIALITY.

3 1. In any mediation proceeding conducted pursuant to this
4 chapter, all information, communications, and documents
5 related to the subject matter of the mediation or the
6 underlying court action are confidential, and shall not be
7 disclosed in any judicial or administrative proceeding, except
8 in the following circumstances:

9 a. All parties to the mediation proceeding agree in
10 writing to the disclosure.

11 b. A written agreement by the parties to mediate permits
12 such disclosure.

13 c. Disclosure is required by statute.

14 d. A communication or document provides evidence of
15 ongoing or future criminal activity.

16 e. A communication or document provides evidence of child
17 abuse as defined in section 232.68.

18 f. A communication or document is relevant to the legal
19 claims of a party to the mediation proceeding against a
20 mediator or mediation program, arising out of a breach of the
21 legal obligations of the mediator or mediation program.

22 g. A communication or document is relevant to determining
23 the existence of an agreement that resulted from the mediation
24 proceeding or is relevant to the enforcement of such an
25 agreement.

26 2. Mediators shall not be examined in any judicial or
27 administrative proceeding regarding confidential
28 communications related to a mediation proceeding and are not
29 subject to judicial or administrative process requiring the
30 disclosure of confidential communications, except in the
31 following circumstances:

32 a. All parties to the mediation proceeding agree in
33 writing to the disclosure.

34 b. A written agreement by the parties to mediate permits
35 such disclosure.

1 c. Disclosure is required by statute.

2 d. A communication or document provides evidence of
3 ongoing or future criminal activity.

4 e. A communication or document provides evidence of child
5 abuse as defined in section 232.68.

6 f. A communication or document is relevant to the legal
7 claims of a party to the mediation proceeding against a
8 mediator or mediation program, arising out of a breach of the
9 legal obligations of the mediator or mediation program.

10 g. A communication or document is relevant to determining
11 the existence of an agreement that resulted from the mediation
12 proceeding or is relevant to the enforcement of such an
13 agreement.

14 3. This section shall not prohibit the release of
15 information necessary to convey to the referring court the
16 disposition of a matter referred for mediation.

17 Sec. 2. NEW SECTION. 598.7C LIMITATION ON MEDIATOR
18 LIABILITY.

19 In any mediation proceeding conducted pursuant to this
20 chapter, the mediator shall not be liable for civil damages
21 for any statement, decision, or other act or omission made in
22 the process of mediation unless the act or omission of the
23 mediator was made in bad faith, with malicious purpose, or in
24 a manner exhibiting willful and wanton disregard of human
25 rights, safety, or property.

26 EXPLANATION

27 Code chapter 598, regarding domestic relations actions,
28 permits the court to order mediation in certain domestic
29 relations actions. The new Code sections added by this bill
30 apply to all mediation proceedings conducted in accordance
31 with the provisions of Code chapter 598, providing for
32 confidentiality of communications in mediations conducted
33 under the chapter, and for a limitation of civil liability of
34 the mediator.

35 New Code section 598.7B provides that all information,

1 communications, and documents related to a mediation
2 proceeding are considered confidential, and may not be
3 disclosed in any judicial or administrative proceeding, except
4 when the parties have agreed in writing to such disclosure,
5 the disclosure involves a past or future criminal act
6 including a disclosure of child abuse, or there is a dispute
7 about the existence of an agreement resulting from the
8 mediation or an allegation of breach of duty by the mediator.
9 The new Code section also prohibits testimony by the mediator,
10 except in the same kind of circumstances, but expressly allows
11 the mediator to report to the referring court on the status of
12 a matter referred for mediation.

13 New Code section 598.7C provides that the mediator shall
14 not be liable for damages for any act or omission unless it
15 was made with malice or in bad faith.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35