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Place On Calendar

HOUSE FILE 2478  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2025)

Passed House, <sup>(p.705)</sup> Date 3/16/98 Passed Senate, <sup>(p.902)</sup> Date 3/25/98  
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0  
Approved April 6, 1998

A BILL FOR

1 An Act relating to confidentiality in the mediation process.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2478

1 Section 1. NEW SECTION. 679C.1 DEFINITIONS.

2 As used in this chapter, unless the context suggests  
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. 679C.2 CONFIDENTIALITY.

3 If a mediation is conducted pursuant to a court order, a  
4 court-connected mediation program, a written agreement between  
5 the parties, or a provision of law, all mediation  
6 communications and mediation documents are privileged and  
7 confidential and not subject to disclosure in any judicial or  
8 administrative proceeding except under any of the following  
9 circumstances:

10 1. When all parties to a mediation agree, in writing, to  
11 disclosure.

12 2. When a written agreement by the parties to mediate  
13 permits disclosure.

14 3. When disclosure is required by statute.

15 4. When a mediation communication or mediation document  
16 provides evidence of an ongoing or future criminal activity.

17 5. When a mediation communication or mediation document  
18 provides evidence of child abuse as defined in section 232.68,  
19 subsection 2.

20 6. When a mediation communication or mediation document is  
21 relevant to the legal claims of a party against a mediator or  
22 mediation program arising out of a breach of the legal  
23 obligations of the mediator or mediation program.

24 7. When a mediation communication or mediation document is  
25 relevant to determining the existence of an agreement that  
26 resulted from the mediation or is relevant to the enforcement  
27 of such an agreement.

28 Sec. 3. NEW SECTION. 679C.3 MEDIATOR PRIVILEGE.

29 If a mediation is conducted pursuant to a court order, a  
30 court-connected mediation program, a written agreement between  
31 the parties, or a provision of law, a mediator or a  
32 representative of a mediation program shall not testify about  
33 a mediation communication or mediation document in any  
34 judicial or administrative proceeding except under any of the  
35 following circumstances:

1 1. When all parties and the mediator agree, in writing, to  
2 disclosure.

3 2. When disclosure is required by statute.

4 3. When a mediation communication or mediation document  
5 provides evidence of an ongoing or future criminal activity.

6 4. When a mediation communication or mediation document  
7 provides evidence of child abuse as defined in section 232.68,  
8 subsection 2.

9 5. When a mediation communication or mediation document is  
10 relevant to the legal claims of a party against a mediator or  
11 mediation program arising out of a breach of the legal  
12 obligations of the mediator or mediation program.

13 6. Provided all parties agree to disclosure, when a  
14 mediation communication or mediation document is relevant to  
15 determining the existence of an agreement that resulted from  
16 the mediation or is relevant to the enforcement of such an  
17 agreement.

18 Sec. 4. NEW SECTION. 679C.4 MEDIATOR IMMUNITY.

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

27 Sec. 5. NEW SECTION. 679C.5 EXCLUSIONS. Mediation  
28 conducted pursuant to sections 20.20 and 20.31 shall not be  
29 subject to this chapter. Except as provided in section  
30 679C.4, mediation conducted before the industrial commissioner  
31 shall not be subject to this chapter. Except as provided in  
32 section 679C.4 and except for mediation conducted pursuant to  
33 chapter 216.15B, mediation conducted pursuant to chapter 216  
34 shall not be subject to this chapter.

35 Sec. 6. Section 13.14, Code 1997, is amended to read as

1 follows:

2 13.14 FARM MEDIATION SERVICE -- CONFIDENTIALITY.

3 1. Meetings of the farm mediation service are closed  
4 meetings and are not subject to chapter 21.

5 2.--Verbal-or-written-information-relating-to-the-mediation  
6 process-and-transmitted-between-a-party-to-a-dispute-and-the  
7 farm-mediation-service,-including-a-mediator-or-the-mediation  
8 staff,-or-any-other-person-present-during-any-stage-of-the  
9 mediation-process-conducted-by-the-service,-whether-reflected  
10 in-notes,-memoranda,-or-other-work-products-in-the-case-files,  
11 is-a-confidential-communication.--Mediators-and-staff-members  
12 shall-not-be-examined-in-any-judicial-or-administrative  
13 proceeding-regarding-confidential-communications-and-are-not  
14 subject-to-judicial-or-administrative-process-requiring-the  
15 disclosure-of-confidential-communications.

16 3 2. Confidentiality is also protected as provided in  
17 section 654A-13 679C.2.

18 Sec. 7. NEW SECTION. 20.31 MEDIATOR PRIVILEGE.

19 1. As used in this section, unless the context otherwise  
20 requires:

21 a. "Mediation" means a process in which an impartial  
22 person attempts to facilitate the resolution of a dispute by  
23 promoting voluntary agreement of the parties to the dispute.  
24 Mediation shall be deemed to commence upon the mediator's  
25 receipt of notice of assignment and shall be deemed to  
26 conclude when the dispute is resolved.

27 b. "Mediator" means a member or employee of the board or  
28 any other person appointed or requested by the board to assist  
29 parties in resolving disputes involving collective bargaining  
30 impasses, contested cases, other agency cases, or contract  
31 grievances.

32 2. A mediator shall not be required to testify in any  
33 judicial, administrative, or grievance proceeding regarding  
34 any matters occurring in the course of a mediation, including  
35 any verbal or written communication or behavior, other than

1 facts relating exclusively to the timing or scheduling of  
2 mediation. A mediator shall not be required to produce or  
3 disclose any documents, including notes, memoranda, or other  
4 work product, relating to mediation, other than documents  
5 relating exclusively to the timing or scheduling of mediation.  
6 This subsection shall not apply in any of the following  
7 circumstances:

8 a. The testimony, production, or disclosure is required by  
9 statute.

10 b. The testimony, production, or disclosure provides  
11 evidence of an ongoing or future criminal activity.

12 c. The testimony, production, or disclosure provides  
13 evidence of child abuse as defined in section 232.68,  
14 subsection 2.

15 Sec. 8. Section 22.7, subsection 20, Code Supplement 1997,  
16 is amended by striking the subsection.

17 Sec. 9. Section 22.7, Code Supplement 1997, is amended by  
18 adding the following new subsection:

19 NEW SUBSECTION. 38. Mediation documents as defined in  
20 section 679C.1, except written mediation agreements that  
21 resulted from a mediation which are signed on behalf of a  
22 governing body. However, confidentiality of mediation  
23 documents resulting from mediation conducted pursuant to  
24 chapter 216 shall be governed by chapter 216.

25 Sec. 10. Section 216.15B, Code 1997, is amended to read as  
26 follows:

27 216.15B MEDIATION -- CONFIDENTIALITY.

28 1. For the purposes of this section, "mediator" shall be  
29 the person designated in writing by the commission to conduct  
30 mediation of a complaint filed under this chapter. The  
31 written designation must specifically refer to this section.

32 ~~2.--All-verbal-or-written-information-relating-to-the~~  
33 ~~subject-matter-of-a-mediation-agreement-and-transmitted~~  
34 ~~between-either-the-complainant-or-the-respondent-and-a~~  
35 ~~mediator-to-resolve-a-complaint-filed-under-this-chapter.~~

1 whether reflected in notes, memoranda, or other work products;  
2 is a confidential communication except as otherwise expressly  
3 provided in this chapter. -- Mediators involved in a mediation  
4 under this section shall not be examined in any judicial or  
5 administrative proceeding regarding the confidential  
6 communications and are not subject to judicial or  
7 administrative process requiring the disclosure of the  
8 confidential communications. -- If a written confidential  
9 communication is kept by the mediator it must be kept in a  
10 mediation file which is maintained separately from the case  
11 file. -- The confidential communications may not be included in  
12 the commission's case file unless the person providing the  
13 information consents to its inclusion in the case file. -- The  
14 mediation file is not part of the file made available to the  
15 parties upon the commission's receipt of a right-to-sue  
16 letter. -- Information maintained in the mediation file and not  
17 included in the case file shall not be considered when making  
18 a recommendation or decision regarding screening, probable  
19 cause, or any issue in a contested case.

20 3. -- A mediator who has reason to believe that a complainant  
21 or respondent has given perjured evidence concerning a  
22 confidential communication is not barred by this section from  
23 disclosing the basis for this belief to any party to a cause  
24 in which the alleged perjury occurs or to the appropriate  
25 authorities, including testifying concerning the relevant  
26 confidential communications. -- If a dispute regarding the  
27 existence of a mediation agreement exists, the terms of the  
28 mediation agreement, or the conduct of the mediation process  
29 itself, the mediator may be examined regarding relevant  
30 confidential communications.

31 2. If mediation is conducted pursuant to this section, the  
32 confidentiality of all mediation communications and mediation  
33 documents is protected as provided in section 679C.2.

34 Sec. 11. Section 654A.13, Code 1997, is amended by  
35 striking the section and inserting in lieu thereof the

1 following:

2 654A.13 CONFIDENTIALITY.

3 If mediation is conducted pursuant to this chapter, the  
4 confidentiality of all mediation communications and mediation  
5 documents is protected as provided in section 679C.2.

6 Sec. 12. Section 679.12, Code 1997, is amended by striking  
7 the section and inserting in lieu thereof the following:

8 679.12 CONFIDENTIALITY.

9 If mediation is conducted pursuant to this chapter, the  
10 confidentiality of all mediation communications and mediation  
11 documents is protected as provided in section 679C.2.

12 EXPLANATION

13 This bill creates new Code chapter 679C relating to  
14 mediation confidentiality in general. The new Code chapter  
15 provides that if a mediation is conducted pursuant to a court  
16 order, a court-connected mediation program, a written  
17 agreement between the parties, or a provision of law, all  
18 mediation communications and mediation documents shall be  
19 deemed confidential, except under certain circumstances. The  
20 new Code chapter provides that if a mediation is conducted  
21 pursuant to a court order, a court-connected mediation  
22 program, a written agreement between the parties, or a  
23 provision of law, a mediator or a representative of a  
24 mediation program shall not testify about a mediation  
25 communication or mediation document in any judicial or  
26 administrative proceeding, except under certain circumstances.  
27 The new Code chapter provides that a mediator or mediation  
28 program shall not be liable for any civil damages for a  
29 statement, decision, or omission made in the process of  
30 mediation unless acts or omissions of bad faith, malicious  
31 purpose, or willful or wanton disregard for human rights,  
32 safety, or property are involved.

33 This bill establishes mediator privilege provisions for  
34 mediation involving collective bargaining disputes before the  
35 public employment relations board pursuant to Code section



1 20.31. Other than facts relating to the timing or scheduling  
 2 of mediation, a mediator shall not be required to testify or  
 3 produce or disclose any communications, behavior, or documents  
 4 relating to or occurring during the course of mediation. The  
 5 provisions include a list of exceptions under which testimony,  
 6 production, or disclosure may occur.

7 The new Code chapter 679C provides that certain types of  
 8 mediation are not subject to new Code chapter 679C.

9 The bill makes conforming amendments in Code chapters 13,  
 10 22, 216, 654A, and 679.

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HOUSE FILE 2478

AN ACT

RELATING TO CONFIDENTIALITY IN THE MEDIATION PROCESS.

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

Section 1. NEW SECTION. 679C.1 DEFINITIONS.

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

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

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

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

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

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

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

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

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

Sec. 2. NEW SECTION. 679C.2 CONFIDENTIALITY.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, all mediation communications and mediation documents are privileged and confidential and not subject to disclosure in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties to a mediation agree, in writing, to disclosure.

2. When a written agreement by the parties to mediate permits disclosure.

3. When disclosure is required by statute.

4. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.

5. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.

6. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.

7. When a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

Sec. 3. NEW SECTION. 679C.3 MEDIATOR PRIVILEGE.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, a mediator or a

representative of a mediation program shall not testify about a mediation communication or mediation document in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties and the mediator agree, in writing, to disclosure.
2. When disclosure is required by statute.
3. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.
4. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.
5. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.
6. Provided all parties agree to disclosure, when a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

Sec. 4. NEW SECTION. 679C.4 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 industrial commissioner and mediation conducted pursuant to chapter 216.

Sec. 5. NEW SECTION. 679C.5 EXCLUSIONS.

Mediation conducted pursuant to sections 20.20 and 20.31 shall not be subject to this chapter. Except as provided in section 679C.4, mediation conducted before the industrial commissioner shall not be subject to this chapter. Except as provided in section 679C.4 and except for mediation conducted pursuant to chapter 216.15B, mediation conducted pursuant to chapter 216 shall not be subject to this chapter.

Sec. 6. Section 13.14, Code 1997, is amended to read as follows:

13.14 FARM MEDIATION SERVICE -- CONFIDENTIALITY.

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

~~2. Verbal or written information relating to the mediation process and transmitted between a party to a dispute and the farm mediation service, including a mediator or the mediation staff, or any other person present during any stage of the mediation process conducted by the service, whether reflected in notes, memoranda, or other work products in the case files, is a confidential communication. Mediators and staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications.~~

3. Confidentiality is also protected as provided in section 654A.13 679C.2.

Sec. 7. NEW SECTION. 20.31 MEDIATOR PRIVILEGE.

1. As used in this section, unless the context otherwise requires:

a. "Mediation" means a process in which an impartial person attempts to facilitate the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. Mediation shall be deemed to commence upon the mediator's receipt of notice of assignment and shall be deemed to conclude when the dispute is resolved.

b. "Mediator" means a member or employee of the board or any other person appointed or requested by the board to assist parties in resolving disputes involving collective bargaining impasses, contested cases, other agency cases, or contract grievances.

2. A mediator shall not be required to testify in any judicial, administrative, or grievance proceeding regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of

mediation. A mediator shall not be required to produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation. This subsection shall not apply in any of the following circumstances:

- a. The testimony, production, or disclosure is required by statute.
- b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity.
- c. The testimony, production, or disclosure provides evidence of child abuse as defined in section 232.68, subsection 2.

Sec. 8. Section 22.7, subsection 20, Code Supplement 1997, is amended by striking the subsection.

Sec. 9. Section 22.7, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 38. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

Sec. 10. Section 216.15B, Code 1997, is amended to read as follows:

216.15B MEDIATION -- CONFIDENTIALITY.

1. For the purposes of this section, "mediator" shall be the person designated in writing by the commission to conduct mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

2. All verbal or written information relating to the subject matter of a mediation agreement and transmitted between either the complainant or the respondent and a mediator to resolve a complaint filed under this chapter, whether reflected in notes, memoranda or other work products, is a confidential communication except as otherwise expressly provided in this chapter. Mediators involved in a mediation

~~under this section shall not be examined in any judicial or administrative proceeding regarding the confidential communications and are not subject to judicial or administrative process requiring the disclosure of the confidential communications. If a written confidential communication is kept by the mediator it must be kept in a mediation file which is maintained separately from the case file. The confidential communications may not be included in the commission's case file unless the person providing the information consents to its inclusion in the case file. The mediation file is not part of the file made available to the parties upon the commission's receipt of a right to sue letter. Information maintained in the mediation file and not included in the case file shall not be considered when making a recommendation or decision regarding screening, probable cause or any issue in a contested case.~~

3. A mediator who has reason to believe that a complainant or respondent has given perjured evidence concerning a confidential communication is not barred by this section from disclosing the basis for this belief to any party to a cause in which the alleged perjury occurs or to the appropriate authorities, including testifying concerning the relevant confidential communications. If a dispute regarding the existence of a mediation agreement exists, the terms of the mediation agreement, or the conduct of the mediation process itself, the mediator may be examined regarding relevant confidential communications.

2. If mediation is conducted pursuant to this section, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

Sec. 11. Section 654A.13, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

654A.13 CONFIDENTIALITY.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

Sec. 12. Section 679.12, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

679.12 CONFIDENTIALITY.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2478, Seventy-seventh General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 6, 1998

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TERRY E. BRANSTAD  
Governor