

CHAPTER 1062
MEDIATION CONFIDENTIALITY
H.F. 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~~ 2. 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.

* The word "section" probably intended

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.

Approved April 6, 1998

CHAPTER 1063

SALES AND USE TAXES AND EXEMPTIONS RELATING TO COMPUTERS, MACHINERY, AND EQUIPMENT

S.F. 2288

AN ACT relating to the sales and use tax on optional service or warranty contracts and to the sales and use tax exemption on certain computers, equipment, machinery, and fuel, relating to the definition of manufacturer for purposes of the exemption, and providing a retroactive applicability date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.43, subsection 6, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

Sec. 2. Section 422.45, subsection 27, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, ~~directly and primarily used in processing by a manufacturer~~ **consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).**

Sec. 3. Section 422.45, subsection 27, paragraph c, Code Supplement 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.