

FILED MAR 9 2005

SENATE FILE 323
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1170)

Passed Senate, Date 3-16-05 Passed House, Date 4-21-05
Vote: Ayes 50 Nays 0 Vote: Ayes 100 Nays 0
Approved 4/28/05

A BILL FOR

1 An Act establishing a uniform mediation Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SC 323

1 Section 1. Section 13.14, subsection 2, Code 2005, is
2 amended to read as follows:

3 2. Confidentiality is also protected as provided in
4 section ~~679E-2~~ 679C.108.

5 Sec. 2. Section 22.7, subsection 37, Code 2005, is amended
6 to read as follows:

7 37. Mediation ~~documents~~ communications as defined in
8 section ~~679E-2~~ 679C.102, except written mediation agreements
9 that resulted from a mediation which are signed on behalf of a
10 governing body. However, confidentiality of mediation
11 ~~documents~~ communications resulting from mediation conducted
12 pursuant to chapter 216 shall be governed by chapter 216.

13 Sec. 3. Section 216.15B, subsection 2, Code 2005, is
14 amended to read as follows:

15 2. If formal mediation is conducted by a mediator pursuant
16 to this section, the confidentiality of all mediation
17 ~~communications and-mediation-documents~~ is protected as
18 provided in section ~~679E-2~~ 679C.108.

19 Sec. 4. Section 654A.13, Code 2005, is amended to read as
20 follows:

21 654A.13 CONFIDENTIALITY.

22 If mediation is conducted pursuant to this chapter, the
23 confidentiality of all mediation communications ~~and-mediation~~
24 ~~documents~~ is protected as provided in section ~~679E-2~~ 679C.108.

25 Sec. 5. Section 679.12, Code 2005, is amended to read as
26 follows:

27 679.12 CONFIDENTIALITY.

28 If mediation is conducted pursuant to this chapter, the
29 confidentiality of all mediation communications ~~and-mediation~~
30 ~~documents~~ is protected as provided in section ~~679E-2~~ 679C.108.

31 Sec. 6. NEW SECTION. 679C.101 SHORT TITLE.

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

33 Sec. 7. NEW SECTION. 679C.102 DEFINITIONS.

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

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

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

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

13 4. "Mediator" means an individual who conducts a
14 mediation.

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

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

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

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

26 b. A legislative hearing or similar process.

27 8. "Record" means information that is inscribed on a
28 tangible medium or that is stored in an electronic or other
29 medium and is retrievable in perceivable form.

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

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

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

1 Sec. 8. NEW SECTION. 679C.103 SCOPE.

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

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

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

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

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

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

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

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

26 d. Conducted at any of the following:

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

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

31 3. If the mediation parties agree in advance in a signed
32 record, or a record of proceeding reflects agreement by the
33 mediation parties, that all or part of a mediation is not
34 privileged, the privileges under sections 679C.104 through
35 679C.106 do not apply to the mediation or part agreed upon.

1 However, sections 679C.104 through 679C.106 apply to a
2 mediation communication made by a person that has not received
3 actual notice of the agreement before the communication is
4 made.

5 Sec. 9. NEW SECTION. 679C.104 PRIVILEGE AGAINST
6 DISCLOSURE -- ADMISSIBILITY -- DISCOVERY.

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

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

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

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

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

22 3. Evidence or information that is otherwise admissible or
23 subject to discovery does not become inadmissible or protected
24 from discovery solely by reason of its disclosure or use in a
25 mediation.

26 Sec. 10. NEW SECTION. 679C.105 WAIVER AND PRECLUSION OF
27 PRIVILEGE.

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

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

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

35 2. A person that discloses or makes a representation about

1 a mediation communication which prejudices another person in a
2 proceeding is precluded from asserting a privilege under
3 section 679C.104, but only to the extent necessary for the
4 person prejudiced to respond to the disclosure or
5 representation.

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

10 Sec. 11. NEW SECTION. 679C.106 EXCEPTIONS TO PRIVILEGE.

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

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

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

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

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

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

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

32 g. A communication that is sought or offered to prove or
33 disprove abuse, neglect, abandonment, or exploitation in a
34 proceeding in which a child or adult protective services
35 agency is a party, unless the child or adult protection case

1 is referred by a court to mediation and a public agency
2 participates.

3 2. There is no privilege under section 679C.104 if a
4 court, administrative agency, or arbitrator finds, after a
5 hearing in camera, that the party seeking discovery or the
6 proponent of the evidence has shown that the evidence is not
7 otherwise available, that there is a need for the evidence
8 that substantially outweighs the interest in protecting
9 confidentiality, and that the mediation communication is
10 sought or offered in any of the following situations:

11 a. A court proceeding involving a felony or misdemeanor.

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

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

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

26 Sec. 12. NEW SECTION. 679C.107 PROHIBITED MEDIATOR
27 REPORTS.

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

33 2. A mediator may disclose any of the following:

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

1 b. A mediation communication as permitted under section
2 679C.106.

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

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

10 Sec. 13. NEW SECTION. 679C.108 CONFIDENTIALITY.

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

14 Sec. 14. NEW SECTION. 679C.109 MEDIATOR'S DISCLOSURE OF
15 CONFLICTS OF INTEREST -- BACKGROUND.

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

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

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

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

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

34 4. A person that violates subsection 1, 2, or 7 is
35 precluded by the violation from asserting a privilege under

1 section 679C.104.

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

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

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

9 Sec. 15. NEW SECTION. 679C.110 PARTICIPATION IN
10 MEDIATION.

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

15 Sec. 16. NEW SECTION. 679C.111 RELATION TO ELECTRONIC
16 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

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

23 Sec. 17. NEW SECTION. 679C.112 UNIFORMITY OF APPLICATION
24 AND CONSTRUCTION.

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

28 Sec. 18. NEW SECTION. 679C.113 SEVERABILITY CLAUSE.

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

35 Sec. 19. NEW SECTION. 679C.114 APPLICATION TO EXISTING

1 AGREEMENTS OR REFERRALS.

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

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

6 Sec. 20. NEW SECTION. 679C.115 MEDIATOR IMMUNITY.

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

16 Sec. 21. Chapter 679C, Code 2005, is repealed.

17 EXPLANATION

18 This bill establishes the "Uniform Mediation Act" in Iowa
19 relating to a mediation process in which a mediator
20 facilitates communication and negotiation between parties to
21 assist them in reaching a voluntary agreement regarding their
22 dispute.

23 The bill applies to a mediation that occurs by statute,
24 court, administrative, or agency rule, or referred to
25 mediation by a court, an administrative agency, or an
26 arbitrator. The bill specifically excludes a mediation
27 conducted by a judge who might make a ruling on the case, a
28 mediation conducted at a primary or secondary school if the
29 parties are students, or at a correctional institution for
30 youths if all of the parties are residents of the institution,
31 and a mediation that involves a collective bargaining
32 agreement, except that the bill applies to a collective
33 bargaining agreement mediation arising out of a dispute that
34 has been filed with an administrative agency or court.

35 The bill provides for privileges against disclosure related

1 to a mediation communication for a mediator, a party involved
2 in a mediation, and a nonparty participant, and includes a
3 provision that the parties in a mediation may agree that all
4 or part of a mediation may not be privileged. The bill
5 further provides that a privilege against disclosure may be
6 waived if expressly waived by all parties to the mediation
7 under certain circumstances, and also provides exceptions to
8 the privileges against disclosure related to a mediation
9 communication that involves a written agreement signed by all
10 parties to the agreement, a communication that is available to
11 the public under the open records law or made during a session
12 of a mediation which is open, or is required by law to be
13 open, to the public, a threat or statement of a plan to
14 inflict bodily injury or to commit a crime of violence, a plan
15 to commit or attempt to commit a crime, or to conceal an
16 ongoing crime or criminal activity, and a communication that
17 is sought or offered to prove or disprove a claim of
18 professional misconduct filed against a mediator. The bill
19 defines a "mediation communication" to mean a statement, oral
20 or written, verbal or nonverbal, that occurs during a
21 mediation or is made for purposes of considering, conducting,
22 participating in, initiating, continuing, or reconvening a
23 mediation or retaining a mediator.

24 The bill provides that a mediator shall not make a report
25 regarding a mediation to a court, administrative agency, or
26 other authority that may make a ruling on the dispute that is
27 the subject of the mediation, except that a mediator may
28 disclose whether the mediation occurred or has terminated,
29 whether a settlement was reached, and attendance, a mediation
30 communication that falls under one of the exceptions to the
31 privilege against disclosure, and a mediation communication
32 evidencing abuse, neglect, abandonment, or exploitation of an
33 individual to the appropriate public agency.

34 The bill also specifies that at any time prior to or during
35 the mediation proceeding, a mediator shall determine whether

1 any facts exist that would prevent the mediator from serving
2 in an impartial manner, and if so, the mediator shall disclose
3 those facts as soon as possible. The bill does not require
4 that a mediator have special background or professional
5 qualifications.

6 The bill provides that a mediator or mediation program
7 shall not be liable for civil damages for a statement,
8 decision, or omission made during mediation unless the act or
9 omission is made in bad faith, with malicious purpose, or with
10 willful or wanton disregard, and that this provision of the
11 bill shall apply to mediation conducted before the workers'
12 compensation commissioner and mediation conducted before the
13 civil rights commission.

14 The bill specifies that an attorney or other individual
15 designated by a party may accompany the party to and
16 participate in the mediation.

17 The bill specifies that the provisions of this chapter
18 modify or supersede certain provisions of the federal law
19 relating to the use of electronic signatures and records in
20 commercial transactions, but the bill does not modify, limit,
21 or supersede such provisions of the same federal law related
22 to consumer consent provisions and the electronic delivery of
23 certain notices. The bill repeals current Code chapter 679C
24 and also makes conforming changes to Code sections 13.14,
25 22.7, 216.15B, 654A.13, and 679.12.

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Miller CO-Chair
Kreiman CO-chair
Ward
Quirnbach

Succeeded By
SF/HF 33

SSB# 1170

Judiciary

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO-CHAIRPERSON MILLER)

Passed Senate, Date _____

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Vote: Ayes _____ Nays _____

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Approved _____

A BILL FOR

1 An Act establishing a uniform mediation Act.

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

11 c. The mediation parties use as a mediator a person who
12 holds oneself out as a mediator or the mediation is provided
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20 of the processes established by a collective bargaining
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32 record, or a record of proceeding reflects agreement by the
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1 However, sections 679C.104 through 679C.106 apply to a
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17 of a mediation communication referred to in subsection 1,
18 paragraph "f", or subsection 2, paragraph "b".

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

26 Sec. 12. NEW SECTION. 679C.107 PROHIBITED MEDIATOR
27 REPORTS.

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

33 2. A mediator may disclose any of the following:

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

1 b. A mediation communication as permitted under section
2 679C.106.

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

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

10 Sec. 13. NEW SECTION. 679C.108 CONFIDENTIALITY.

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

14 Sec. 14. NEW SECTION. 679C.109 MEDIATOR'S DISCLOSURE OF
15 CONFLICTS OF INTEREST -- BACKGROUND.

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

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

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

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

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

34 4. A person that violates subsection 1, 2, or 7 is
35 precluded by the violation from asserting a privilege under

1 section 679C.104.

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

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

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

9 Sec. 15. NEW SECTION. 679C.110 PARTICIPATION IN
10 MEDIATION.

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

15 Sec. 16. NEW SECTION. 679C.111 RELATION TO ELECTRONIC
16 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

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

23 Sec. 17. NEW SECTION. 679C.112 UNIFORMITY OF APPLICATION
24 AND CONSTRUCTION.

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

28 Sec. 18. NEW SECTION. 679C.113 SEVERABILITY CLAUSE.

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

35 Sec. 19. NEW SECTION. 679C.114 APPLICATION TO EXISTING

1 AGREEMENTS OR REFERRALS.

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

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

6 Sec. 20. NEW SECTION. 679C.115 MEDIATOR IMMUNITY.

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

16 Sec. 21. Chapter 679C, Code 2005, is repealed.

17 EXPLANATION

18 This bill establishes the "Uniform Mediation Act" in Iowa
19 relating to a mediation process in which a mediator
20 facilitates communication and negotiation between parties to
21 assist them in reaching a voluntary agreement regarding their
22 dispute.

23 The bill applies to a mediation that occurs by statute,
24 court, administrative, or agency rule, or referred to
25 mediation by a court, an administrative agency, or an
26 arbitrator. The bill specifically excludes a mediation
27 conducted by a judge who might make a ruling on the case, a
28 mediation conducted at a primary or secondary school if the
29 parties are students, or at a correctional institution for
30 youths if all of the parties are residents of the institution,
31 and a mediation that involves a collective bargaining
32 agreement, except that the bill applies to a collective
33 bargaining agreement mediation arising out of a dispute that
34 has been filed with an administrative agency or court.

35 The bill provides for privileges against disclosure related

1 to a mediation communication for a mediator, a party involved
2 in a mediation, and a nonparty participant, and includes a
3 provision that the parties in a mediation may agree that all
4 or part of a mediation may not be privileged. The bill
5 further provides that a privilege against disclosure may be
6 waived if expressly waived by all parties to the mediation
7 under certain circumstances, and also provides exceptions to
8 the privileges against disclosure related to a mediation
9 communication that involves a written agreement signed by all
10 parties to the agreement, a communication that is available to
11 the public under the open records law or made during a session
12 of a mediation which is open, or is required by law to be
13 open, to the public, a threat or statement of a plan to
14 inflict bodily injury or to commit a crime of violence, a plan
15 to commit or attempt to commit a crime, or to conceal an
16 ongoing crime or criminal activity, and a communication that
17 is sought or offered to prove or disprove a claim of
18 professional misconduct filed against a mediator. The bill
19 defines a "mediation communication" to mean a statement, oral
20 or written, verbal or nonverbal, that occurs during a
21 mediation or is made for purposes of considering, conducting,
22 participating in, initiating, continuing, or reconvening a
23 mediation or retaining a mediator.

24 The bill provides that a mediator shall not make a report
25 regarding a mediation to a court, administrative agency, or
26 other authority that may make a ruling on the dispute that is
27 the subject of the mediation, except that a mediator may
28 disclose whether the mediation occurred or has terminated,
29 whether a settlement was reached, and attendance, a mediation
30 communication that falls under one of the exceptions to the
31 privilege against disclosure, and a mediation communication
32 evidencing abuse, neglect, abandonment, or exploitation of an
33 individual to the appropriate public agency.

34 The bill also specifies that at any time prior to or during
35 the mediation proceeding, a mediator shall determine whether

1 any facts exist that would prevent the mediator from serving
2 in an impartial manner, and if so, the mediator shall disclose
3 those facts as soon as possible. The bill does not require
4 that a mediator have special background or professional
5 qualifications.

6 The bill provides that a mediator or mediation program
7 shall not be liable for civil damages for a statement,
8 decision, or omission made during mediation unless the act or
9 omission is made in bad faith, with malicious purpose, or with
10 willful or wanton disregard, and that this provision of the
11 bill shall apply to mediation conducted before the workers'
12 compensation commissioner and mediation conducted before the
13 civil rights commission.

14 The bill specifies that an attorney or other individual
15 designated by a party may accompany the party to and
16 participate in the mediation.

17 The bill specifies that the provisions of this chapter
18 modify or supersede certain provisions of the federal law
19 relating to the use of electronic signatures and records in
20 commercial transactions, but the bill does not modify, limit,
21 or supersede such provisions of the same federal law related
22 to consumer consent provisions and the electronic delivery of
23 certain notices. The bill repeals current Code chapter 679C
24 and also makes conforming changes to Code sections 13.14,
25 22.7, 216.15B, 654A.13, and 679.12.

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SENATE FILE 323

AN ACT
ESTABLISHING A UNIFORM MEDIATION ACT.

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

Section 1. Section 13.14, subsection 2, Code 2005, is amended to read as follows:

2. Confidentiality is also protected as provided in section 679E+2 679C.108.

Sec. 2. Section 22.7, subsection 37, Code 2005, is amended to read as follows:

37. Mediation ~~documents~~ communications as defined in section 679E+2 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation ~~documents~~ communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

Sec. 3. Section 216.15B, subsection 2, Code 2005, is amended to read as follows:

2. If formal mediation is conducted by a mediator pursuant to this section, the confidentiality of all mediation

~~communications and-mediation-documents~~ is protected as provided in section 679E+2 679C.108.

Sec. 4. Section 654A.13, Code 2005, is amended to read as follows:

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 679E+2 679C.108.

Sec. 5. Section 679.12, Code 2005, is amended to read as follows:

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 679E+2 679C.108.

Sec. 6. NEW SECTION. 679C.101 SHORT TITLE.

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

Sec. 7. NEW SECTION. 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.

Sec. 8. NEW SECTION. 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 by 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.

Sec. 9. NEW SECTION. 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 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.

Sec. 10. NEW SECTION. 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.

Sec. 11. NEW SECTION. 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.

Sec. 12. NEW SECTION. 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.

Sec. 13. NEW SECTION. 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.

Sec. 14. NEW SECTION. 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 practical 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.

Sec. 15. NEW SECTION. 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.

Sec. 16. NEW SECTION. 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.

Sec. 17. NEW SECTION. 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.

Sec. 18. NEW SECTION. 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.

Sec. 19. NEW SECTION. 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.

Sec. 20. NEW SECTION. 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.

Sec. 21. Chapter 679C, Code 2005, is repealed.

JOHN P. KIBBIE
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 323, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/28, 2005

THOMAS J. VILSACK
Governor