

SENATE BILL REPORT

ESHB 1055

As of March 29, 2005

Title: An act relating to the uniform mediation act.

Brief Description: Enacting the Uniform Mediation Act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest and Morrell).

Brief History: Passed House: 2/28/05, 95-0.

Committee Activity: Judiciary: 3/17/05.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: The Uniform Mediation Act (UMA) is the result of collaboration between the National Conference of Commissioners on Uniform State Laws and the Dispute Resolution Section of the American Bar Association.

Generally, communications made and materials submitted in connection with a mediation are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding. However, this privilege and confidentiality does not apply:

- to the settlement agreement from the mediation proceeding;
- to communications pertaining solely to administrative matters;
- when the parties to the mediation agree in writing to disclosure;
- when the materials are otherwise discoverable and were not prepared specifically for use in and actually used in the mediation;
- when disclosure is required by statute; and
- in a subsequent action between the mediator and a party.

Privilege and confidentiality in mediations conducted by a state or federal agency under collective bargaining laws are governed by the agency's rules.

Statutes governing dispute resolution centers established by a municipality, county, or nonprofit organization specify what types of mediation communications are privileged and confidential. Threats to injure any person or damage a party's property are not privileged and confidential to the extent such communication may be relevant evidence in a criminal matter. Statutes and court rules applicable to family law mediations generally provide that those mediations are confidential unless it is a postdecree mediation required under a parenting plan.

The Open Public Meetings Act requires all meetings of a public agency to be open and public except for collective bargaining sessions and quasi-judicial matters between named parties as distinguished from matters having general effect on the public. The Public Disclosure Act

generally requires state agencies to make all documents available to the public unless specifically exempted by statute.

Summary of Bill: The UMA, which addresses privilege and confidentiality of mediation communications, is adopted. The UMA allows disclosure of mediation communications made during a session of a mediation that is open, or is required by law to be open, to the public. There are six exceptions to the privilege of confidentiality in the UMA. The six exceptions include when the mediation communications: (1) constitute a threat or statement of a plan to inflict bodily injury or commit a violent crime; (2) are intentionally used to plan a crime, attempt to commit a crime, or conceal ongoing criminal activity; (3) are sought or offered to prove or disprove a claim of professional misconduct filed against a mediation party based on conduct occurring during a mediation; (4) are 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; (5) are sought or offered in a court proceeding involving a criminal felony; and (6) are sought or offered in a proceeding to prove a claim or avoid liability on a contract arising out of the mediation.

The UMA applies to: mediations mandated by any statute, court, or administrative rule; mediations to which parties have been referred by a court, administrative agency, or arbitrator; and mediations conducted by a professional mediator. The UMA does not cover mediations conducted by a judge who might make a ruling on the case and mediations conducted under the auspices of a primary or secondary school, if all the parties are students, or a correctional institution for youths, if all the parties are residents of the institution.

The UMA applies to dissolution of marriage and legal separation mediations except that communications in postdecree mediations that are mandated by a parenting plan are admissible in subsequent proceedings for limited purposes. The limited purposes include proving: (1) abuse, neglect, abandonment, exploitation, or unlawful harassment of a child; (2) abuse or unlawful harassment of a family or household member; and (3) that a parent used or frustrated the dispute resolution process without good reason.

A mediator is not allowed to make a report 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. The UMA requires prospective mediators to disclose conflicts of interest to the parties and answer the parties' questions about qualifications. A party has a right to be accompanied by a support person and have the person participate in the mediation

Regardless of any provision to the contrary in chapter 42.17 RCW, the Open Records Act, all work products or case files of dispute resolution centers are confidential and privileged unless a court, or administrative tribunal, determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material. Privilege and confidentiality in mediations conducted by federal or state agencies under collective bargaining laws are not governed by the UMA.

The UMA expressly modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, except as it pertains to electronic delivery of certain notices.

The effective date is January 1, 2006

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2006.

Testimony For: This committee approved the same language in SB 5173 earlier this session. This is a bill that will save time and money for people. It derives from the National Conference of Commissioners on Uniform State Laws and the Dispute Resolution Section of the American Bar Association.

Testimony Against: None.

Who Testified: PRO: Nicholas Wagner, Washington State Bar Association.