
By: Delegates Preis and Doory

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Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Court-Ordered Mediation - Board of Certification for Mediators**

3 FOR the purpose of requiring a circuit court, in actions involving family disputes, to order
4 the parties to participate in mediation; requiring a court to provide the parties with
5 a list containing the names of certain Board Certified Mediators under certain
6 circumstances; permitting the parties to select a mediator who is not a Board
7 Certified Mediator; prohibiting a court from ordering the parties to attend
8 mediation in certain instances; establishing certain qualifications for Board
9 Certified Mediators; establishing a Board of Certification for Mediators;
10 establishing certain qualifications and terms for Board members; providing for
11 certain powers and duties of the Board; defining certain terms; specifying the terms
12 of the initial members of the Board; providing for the application of this Act;
13 providing for a delayed effective date for certain provisions of this Act; and
14 generally relating to the mediation of disputes.

15 BY adding to

16 Article - Courts and Judicial Proceedings
17 Section 3-601 through 3-606, inclusive, to be under the new subtitle "Subtitle
18 6. Mediation"
19 Annotated Code of Maryland
20 (1995 Replacement Volume and 1996 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Courts and Judicial Proceedings**

24 SUBTITLE 6. MEDIATION.

25 3-601.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) "BOARD" MEANS THE MARYLAND BOARD OF CERTIFICATION FOR
29 MEDIATORS.

1 (C) "BOARD CERTIFIED MEDIATOR" MEANS A MEDIATOR WHO MEETS THE
2 QUALIFICATIONS UNDER § 3-604 OF THIS SUBTITLE AND WHO IS CERTIFIED BY THE
3 BOARD OF CERTIFICATION FOR MEDIATORS.

4 (D) "FAMILY DISPUTE" MEANS A DISPUTE BETWEEN THE PARTIES RELATING
5 TO ISSUES OF:

6 (1) CHILD CUSTODY OR VISITATION, BUT NOT INCLUDING
7 PROCEEDINGS INVOLVING A CHILD ALLEGED TO BE IN NEED OF ASSISTANCE AS
8 PROVIDED UNDER SUBTITLE 8 OF THIS TITLE;

9 (2) SPOUSAL OR CHILD SUPPORT; OR

10 (3) PROPERTY DISPOSITION.

11 (E) "MEDIATION" MEANS A FORM OF ALTERNATIVE DISPUTE RESOLUTION IN
12 WHICH A TRAINED NEUTRAL PERSON ASSISTS TWO OR MORE DISPUTING PARTIES
13 TO DEFINE THEIR ISSUES, DEFINE THEIR INTERESTS, AND RESOLVE THEIR DISPUTES
14 IN A VOLUNTARY AGREEMENT.

15 (F) "MEDIATOR" MEANS A TRAINED NEUTRAL THIRD PERSON WHO ASSISTS
16 THE PARTIES IN REACHING A MUTUALLY ACCEPTABLE AGREEMENT THROUGH THE
17 PROCESS OF MEDIATION.

18 3-602.

19 (A) (1) IN ANY ACTION FILED IN A CIRCUIT COURT INVOLVING A FAMILY
20 DISPUTE, THE COURT SHALL ISSUE AN ORDER REQUIRING THE PARTIES TO
21 PARTICIPATE IN UP TO 2 HOURS OF MEDIATION.

22 (2) THE MEDIATION SHALL BE COMPLETED WITHIN THE TIME
23 PROVIDED IN THE SCHEDULING ORDER.

24 (3) THE MEDIATION MAY BE HELD IN MORE THAN ONE SESSION.

25 (4) THE COURT SHALL PROVIDE THE PARTIES WITH A LIST CONTAINING
26 THE NAME OF EACH BOARD CERTIFIED MEDIATOR WHO IS QUALIFIED TO MEDIATE
27 FAMILY DISPUTES AS PROVIDED UNDER § 3-604(B) OF THIS SUBTITLE AND WHO
28 OFFERS MEDIATION SERVICES IN THE JURISDICTION OF THE COURT ISSUING THE
29 ORDER.

30 (5) THE PARTIES MAY SELECT A MEDIATOR WHO IS NOT A BOARD
31 CERTIFIED MEDIATOR.

32 (B) (1) AT THE DISCRETION OF THE COURT THE ORDER MAY:

33 (I) REQUIRE EACH PARTY TO MAKE, UNDER OATH, A FULL AND
34 COMPLETE FINANCIAL DISCLOSURE OF ASSETS, LIABILITIES, INCOME, AND
35 EXPENSES; AND

36 (II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, PROVIDE
37 FOR THE PREPAYMENT OF THE MEDIATION, ALLOCATED BETWEEN THE PARTIES,
38 TO PAY FOR THE COST OF UP TO 2 HOURS OF MEDIATION, AND TO BE PAID
39 DIRECTLY TO THE MEDIATOR.

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1 (2) THE COURT MAY WAIVE THE PREPAYMENT OF THE MEDIATION
2 PROVIDED IN PARAGRAPH (1)(II) OF THIS SUBSECTION.

3 (C) IF COUNSEL FOR A PARTY OR A CHILD REPRESENTS TO THE COURT IN
4 GOOD FAITH THAT THERE IS A GENUINE ISSUE OF PHYSICAL OR SEXUAL ABUSE OF
5 THE PARTY OR CHILD, AND THAT, AS A RESULT, MEDIATION WOULD BE
6 INAPPROPRIATE, THE COURT SHALL NOT ORDER MEDIATION.

7 (D) (1) THE PARTIES MAY VOLUNTARILY CONSENT TO ATTEND MEDIATION
8 SESSIONS IN EXCESS OF THE SESSIONS ORDERED BY THE COURT.

9 (2) IF THE PARTIES ATTEND MEDIATION SESSIONS IN EXCESS OF THE
10 SESSIONS ORDERED BY THE COURT, THE PARTIES SHALL PAY ANY FEE FOR THE
11 MEDIATION SESSIONS DIRECTLY TO THE MEDIATOR.

12 3-603.

13 (A) THIS SECTION SHALL APPLY ONLY TO ACTIONS NOT INVOLVING FAMILY
14 DISPUTES.

15 (B) (1) WHERE THE COURT ISSUES AN ORDER REQUIRING MEDIATION, THE
16 COURT SHALL PROVIDE THE PARTIES WITH A LIST CONTAINING THE NAME OF EACH
17 BOARD CERTIFIED MEDIATOR WHO OFFERS MEDIATION SERVICES IN THE
18 JURISDICTION OF THE COURT ISSUING THE ORDER.

19 (2) THE PARTIES MAY SELECT A MEDIATOR WHO IS NOT A BOARD
20 CERTIFIED MEDIATOR.

21 3-604.

22 (A) MEDIATORS MAY APPLY FOR CERTIFICATION WITH THE BOARD OF
23 CERTIFICATION FOR MEDIATORS.

24 (B) TO ATTAIN CERTIFICATION, EACH MEDIATOR SHALL:

25 (1) HAVE AT LEAST A BACHELOR'S DEGREE AND AT LEAST 2 YEARS OF
26 PRACTICAL EXPERIENCE IN MEDIATION;

27 (2) HAVE COMPLETED 40 HOURS OF TRAINING IN MEDIATION
28 APPROVED BY THE BOARD;

29 (3) IN ORDER TO MEDIATE FAMILY DISPUTES, IF NOT LICENSED TO
30 PRACTICE LAW IN THIS STATE, HAVE COMPLETED 40 HOURS OF TRAINING IN
31 MARYLAND FAMILY LAW;

32 (4) IN ORDER TO MEDIATE FAMILY DISPUTES, WHETHER OR NOT
33 LICENSED TO PRACTICE LAW IN THIS STATE, HAVE COMPLETED A 20-HOUR
34 DIVORCE MEDIATION TRAINING PROGRAM APPROVED BY THE BOARD;

35 (5) BE OF GOOD MORAL CHARACTER;

36 (6) POSSESS MALPRACTICE INSURANCE, INCLUDING COVERAGE FOR
37 MEDIATION PRACTICE, OF AT LEAST \$100,000 PER OCCURRENCE AND AN
38 AGGREGATE LIMIT OF \$200,000;

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1 (7) ABIDE BY A CODE OF ETHICS ADOPTED BY THE BOARD; AND

2 (8) CONSENT TO PERFORMANCE-BASED EVALUATIONS AS REQUIRED
3 BY THE BOARD.

4 3-605.

5 (A) THERE IS A MARYLAND BOARD OF CERTIFICATION FOR MEDIATORS.

6 (B) (1) THE BOARD SHALL CONSIST OF SEVEN MEMBERS APPOINTED BY
7 THE GOVERNOR.

8 (2) EACH MEMBER SHALL BE A PRACTICING MEDIATOR.

9 (3) THREE MEMBERS SHALL BE MEMBERS OF THE MARYLAND BAR.

10 (4) OF THE FOUR REMAINING MEMBERS, WHO MAY NOT BE MEMBERS
11 OF THE MARYLAND BAR:

12 (I) TWO SHALL HAVE AT LEAST 5 YEARS OF EXPERIENCE
13 MEDIATING FAMILY DISPUTES; AND

14 (II) TWO SHALL HAVE AT LEAST 5 YEARS OF EXPERIENCE
15 MEDIATING DISPUTES IN THIS STATE.

16 (5) FROM THE MEMBERS THE GOVERNOR SHALL SELECT A
17 CHAIRPERSON WHO SHALL BE A MEMBER OF THE MARYLAND BAR.

18 (C) (1) EACH MEMBER SHALL SERVE FOR A TERM OF 4 YEARS AND UNTIL A
19 SUCCESSOR IS APPOINTED AND QUALIFIES.

20 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE
21 TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 1997.

22 (3) A MEMBER WHO IS APPOINTED TO FILL A VACANCY IN AN
23 UNEXPIRED TERM SERVES ONLY FOR THE REMAINDER OF THE TERM AND UNTIL A
24 SUCCESSOR IS APPOINTED AND QUALIFIES.

25 (D) EACH MEMBER OF THE BOARD:

26 (1) SERVES WITHOUT COMPENSATION; AND

27 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES IN ACCORDANCE
28 WITH THE STATE'S APPLICABLE TRAVEL REGULATIONS.

29 3-606.

30 (A) IN ADDITION TO THE OTHER POWERS GRANTED AND DUTIES IMPOSED
31 BY THIS SUBTITLE, THE BOARD SHALL:

32 (1) CERTIFY PERSONS SEEKING QUALIFICATION AS BOARD CERTIFIED
33 MEDIATORS;

34 (2) ADOPT A CODE OF ETHICS FOR BOARD CERTIFIED MEDIATORS AND
35 REQUIRE ALL BOARD CERTIFIED MEDIATORS TO CONFORM TO THE CODE;

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1 (3) TAKE DISCIPLINARY ACTION, INCLUDING SUSPENSION AND
2 DISQUALIFICATION OF BOARD CERTIFIED MEDIATORS, UNDER REGULATIONS
3 ADOPTED BY THE BOARD;

4 (4) PROVIDE FOR PERIODIC EVALUATION AND RECERTIFICATION OF
5 BOARD CERTIFIED MEDIATORS;

6 (5) CHARGE FEES TO COVER THE COST OF THE OPERATION OF THE
7 BOARD;

8 (6) HIRE STAFF AS NECESSARY TO CARRY OUT THE PROVISIONS OF
9 THIS SUBTITLE; AND

10 (7) ADOPT OTHER REASONABLE REGULATIONS TO CARRY OUT THE
11 PROVISIONS OF THIS SUBTITLE.

12 (B) THE BOARD MAY PERMIT AND APPROVE THE PARTICIPATION OF
13 STUDENT MEDIATORS AND WAIVE DEGREE AND EXPERIENCE REQUIREMENTS FOR
14 STUDENT MEDIATORS IN PROGRAMS THAT USE VOLUNTEER MEDIATORS
15 SUPERVISED BY BOARD CERTIFIED MEDIATORS.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
17 members of the Board of Certification for Mediators shall expire as follows:

18 (1) two members in 2000;

19 (2) two members in 1999; and

20 (3) three members in 1998.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed
22 only prospectively and may not be applied or interpreted to have any effect on or
23 application to any case filed before the effective date of this Act.

24 SECTION 4. AND BE IT FURTHER ENACTED, That §§ 3-602 and 3-603 of the
25 Courts Article, as enacted by this Act, shall take effect October 1, 1998.

26 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
27 Section 4 of this Act, this Act shall take effect October 1, 1997.