
By: Senator Astle

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Mediation Services - Confidentiality Standards**

3 FOR the purpose of requiring certain persons who hold themselves out to the public as
4 providing mediation services, and persons who are parties in a mediation
5 proceeding, to adhere to certain standards of confidentiality; providing that these
6 persons may not be required to disclose certain information through discovery or
7 compulsory process; defining certain terms; providing for certain penalties; and
8 generally relating to consumer protection in the practice of mediation.

9 BY adding to

10 Article - Commercial Law
11 Section 14-2801 through 14-2803, inclusive, to be under the new subtitle "Subtitle
12 28. Mediation Services"
13 Annotated Code of Maryland
14 (1990 Replacement Volume and 1996 Supplement)

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

17 **Article - Commercial Law**

18 **SUBTITLE 28. MEDIATION SERVICES.**

19 14-2801.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) "MEDIATION" MEANS AN INTERVENTION IN DISPUTE NEGOTIATIONS BY A
23 TRAINED NEUTRAL THIRD PARTY WITH THE PURPOSE OF ASSISTING THE PARTIES
24 TO REACH THEIR OWN SOLUTION.

25 (C) (1) "MEDIATION COMMUNICATION" MEANS ANY ORAL OR WRITTEN
26 COMMUNICATION PREPARED OR EXPRESSED FOR THE PURPOSE OF, IN THE COURSE
27 OF, OR IN ACCORDANCE WITH, ANY MEDIATION SERVICES PROCEEDING OR
28 DISPUTE RESOLUTION PROGRAM PROCEEDINGS.

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1 (2) "MEDIATION COMMUNICATION" INCLUDES ANY MEMORANDA,
2 NOTES, RECORDS, OR WORK PRODUCT OF A MEDIATOR, MEDIATION
3 ORGANIZATION, OR PARTY.

4 (3) "MEDIATION COMMUNICATION", UNLESS OTHERWISE AGREED BY
5 THE PARTIES, DOES NOT INCLUDE:

6 (I) A WRITTEN AGREEMENT TO ENTER INTO A MEDIATION
7 SERVICE PROCEEDING OR DISPUTE RESOLUTION PROCEEDING; OR

8 (II) A FINAL WRITTEN AGREEMENT REACHED AS A RESULT OF A
9 MEDIATION SERVICE PROCEEDING, OR DISPUTE RESOLUTION PROCEEDING, THAT
10 HAS BEEN FULLY EXECUTED.

11 (D) "MEDIATION ORGANIZATION" MEANS ANY PUBLIC OR PRIVATE
12 CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT PROVIDES MEDIATION
13 SERVICES OR DISPUTE RESOLUTION PROGRAMS THROUGH ONE OR MORE
14 MEDIATORS.

15 (E) "MEDIATION SERVICES" AND "DISPUTE RESOLUTION PROGRAMS" MEANS
16 A PROCESS BY WHICH PARTIES INVOLVED IN A DISPUTE, WHETHER OR NOT AN
17 ACTION HAS BEEN FILED IN COURT, AGREE TO ENTER INTO ONE OR MORE
18 SETTLEMENT DISCUSSIONS WITH A MEDIATOR IN ORDER TO RESOLVE THEIR
19 DISPUTE.

20 (F) "MEDIATOR" MEANS A PERSON WHO HOLDS HIMSELF OR HERSELF OUT
21 TO THE PUBLIC AS PROVIDING MEDIATION SERVICES.

22 (G) (1) "PARTY" MEANS A MEDIATION PARTICIPANT OTHER THAN THE
23 MEDIATOR.

24 (2) "PARTY" INCLUDES A PERSON, PUBLIC OFFICER, OR ANY OTHER
25 PUBLIC OR PRIVATE ENTITY.

26 14-2802.

27 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A MEDIATOR,
28 A MEDIATION ORGANIZATION, OR A PARTY IN A MEDIATION SERVICES
29 PROCEEDING OR DISPUTE RESOLUTION PROCEEDING MAY NOT VOLUNTARILY
30 DISCLOSE, OR THROUGH DISCOVERY OR COMPULSORY PROCESS BE REQUIRED TO
31 DISCLOSE, ANY INFORMATION CONCERNING ANY MEDIATION COMMUNICATION
32 PROVIDED IN CONFIDENCE TO THE MEDIATOR OR A MEDIATION ORGANIZATION.

33 (B) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION DO NOT APPLY
34 IF:

35 (1) ALL PARTIES TO THE PROCEEDING AND THE MEDIATOR CONSENT
36 IN WRITING;

37 (2) THE MEDIATION COMMUNICATION REVEALS THE INTENT TO
38 COMMIT A FELONY, INFLICT BODILY HARM, OR THREATEN THE SAFETY OF A CHILD
39 UNDER THE AGE OF 16 YEARS;

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1 (3) THE MEDIATION COMMUNICATION IS REQUIRED BY LAW TO BE
2 MADE PUBLIC; OR

3 (4) DISCLOSURE OF THE MEDIATION COMMUNICATION IS NECESSARY
4 AND RELEVANT TO AN ACTION ALLEGING WILLFUL OR WANTON MISCONDUCT OF
5 THE MEDIATOR OR MEDIATION ORGANIZATION.

6 (C) ANY MEDIATION COMMUNICATION DISCLOSED IN VIOLATION OF THIS
7 SECTION MAY NOT BE ADMITTED INTO EVIDENCE IN ANY JUDICIAL OR
8 ADMINISTRATIVE PROCEEDING.

9 (D) THIS SECTION DOES NOT PREVENT:

10 (1) THE DISCOVERY OR ADMISSIBILITY OF ANY EVIDENCE THAT IS
11 OTHERWISE DISCOVERABLE, MERELY BECAUSE THE EVIDENCE WAS PRESENTED IN
12 THE COURSE OF A MEDIATION SERVICES PROCEEDING OR A DISPUTE RESOLUTION
13 PROCEEDING; OR

14 (2) IF THE PARTIES OR THE SPECIFIC CIRCUMSTANCES OF THE PARTIES'
15 CONTROVERSY ARE NOT IDENTIFIABLE, THE GATHERING OF INFORMATION:

16 (I) FOR RESEARCH OR EDUCATIONAL PURPOSES; OR

17 (II) FOR THE PURPOSE OF EVALUATING OR MONITORING THE
18 PERFORMANCE OF A MEDIATOR, MEDIATION ORGANIZATION, MEDIATION
19 SERVICE, OR DISPUTE RESOLUTION PROGRAM.

20 14-2803.

21 ANY PERSON ACTING AS A MEDIATOR OR MEDIATION ORGANIZATION WHO
22 VIOLATES THIS SUBTITLE SHALL BE SUBJECT TO THE PROCEDURES AND PENALTIES
23 PROVIDED IN TITLE 13, SUBTITLE 4 OF THIS ARTICLE.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1997.