

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Adopt Portions of the Uniform Mediation Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA Pt. 8 is enacted to read:

PART 8

mediation

CHAPTER 801

uniform mediation act

§ 10001. Title

This chapter may be known and cited as "the Uniform Mediation Act."

§ 10002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Mediation. "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. "Mediation communication" means a statement, whether oral or in a record or 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. "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

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

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

6. Person. "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. "Proceeding" means:

A. A judicial, administrative, arbitral or other adjudicative process, including related prehearing and posthearing motions, conferences and discovery; or

B. A legislative hearing or similar process.

8. Record. "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. "Sign" means:

A. To execute or adopt a tangible symbol with the present intent to authenticate a record; or

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.

§ 10003. Scope

1. Application. Except as otherwise provided in subsection 2 or 3, this chapter applies to a mediation in which:

A. The mediation parties are required to mediate by statute or court or administrative agency rule or to be 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; or

C. The mediation parties use as a mediator an individual who is held out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

2. Exemptions. This chapter does not apply to a mediation:

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; or

D. Conducted under the auspices of:

(1) A primary or secondary school if all the parties are students; or

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

3. By agreement. If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 10004 to 10006 do not apply to the mediation or part agreed upon. However, sections 10004 to 10006 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 10004. Privilege against disclosure; admissibility; discovery

1. Privileged unless waived or precluded. Except as otherwise provided in section 10006, 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 10005.

2. Privileges. In a proceeding, the following privileges 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. Admissibility; discovery. 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.

§ 10005. Waiver and preclusion of privilege

1. Waiver. A privilege under section 10004 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

A. In the case of the privilege of a mediator, it is expressly waived by the mediator; and

B. In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

2. Prejudice; precluded. A person that discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 10004, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

3. Crime or criminal activity; precluded. A person that intentionally uses a mediation to plan, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 10004.

§ 10006. Exceptions to privilege

1. Exceptions. There is no privilege under section 10004 for a mediation communication that is:

- A. In an agreement evidenced by a record signed by all parties to the agreement;
- B. Available to the public under Title 1, chapter 13, subchapter 1 or made during a session of a mediation that 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. Intentionally used to plan a crime, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity;
- E. 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, 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 party based on conduct occurring during a mediation; or
- G. 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 case is referred by a court to mediation and a public agency participates.

2. Evidence not otherwise available. There is no privilege under section 10004 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:

- A. A court proceeding involving a murder or a Class A, B or C crime; or
- B. Except as otherwise provided in subsection 3, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

3. Mediator may not be compelled; certain situations. A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection 1, paragraph F or subsection 2, paragraph B.

4. Limitations. If a mediation communication is not privileged under subsection 1 or 2, only the portion of the mediation 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.

§ 10007. Prohibited mediator reports

1. Prohibited communication by mediator. Except as required in subsection 2, a mediator may 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. Permitted communication by mediator. A mediator may disclose:

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

B. A mediation communication as permitted under section 10006; or

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. Communication may not be considered. A communication made in violation of subsection 1 may not be considered by a court, administrative agency or arbitrator.

§ 10008. Confidentiality

Unless subject to Title 1, chapter 13, subchapter 1, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

§ 10009. Uniformity of application and construction

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 10010. Application to existing agreements or referrals

1. New referrals or agreements. This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2010.

2. All agreements. On or after July 1, 2010, this chapter governs an agreement to mediate whenever made.

§ 10011. Effective date

This chapter takes effect January 1, 2010.

SUMMARY

The purpose of this bill is to encourage parties involved in mediation to communicate openly, and to protect the confidentiality of participants in the mediation process. This bill adopts those portions of the Uniform Mediation Act, as adopted by the National Conference of Commissioners on Uniform State Laws, that:

1. Establish privileges for mediation communication regarding disclosure, admissibility and discovery;
2. Authorize exceptions and waivers to the established privileges;
3. Specifically prohibit and permit various communications by a mediator; and
4. Establish the confidentiality of mediation communications.