

# STATE OF NEW YORK

1967

2007-2008 Regular Sessions

## IN SENATE

January 29, 2007

Introduced by Sens. VOLKER, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to establishing the uniform mediation act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Uniform Mediation Act".

3 § 2. The civil practice law and rules is amended by adding a new arti-  
4 cle 74 to read as follows:

### ARTICLE 74

#### UNIFORM MEDIATION

7 Section 7401. Definitions.

8 7402. Scope.

9 7403. Privilege against disclosure; admissibility; discovery.

10 7404. Waiver and preclusion of privilege.

11 7405. Exceptions to privilege.

12 7406. Prohibited mediator reports.

13 7407. Confidentiality.

14 7408. Mediator's disclosure of conflicts of interest; back-  
15 ground.

16 7409. Participation in mediation.

17 7410. Relation to electronic signatures in global and national  
18 commerce.

19 7411. Uniformity of application and construction.

20 § 7401. Definitions. As used in this article the following terms shall  
21 have the following meanings:

22 (a) "Mediation" means a process in which a mediator facilitates commu-  
23 nication and negotiation between parties to assist them in reaching a  
24 voluntary agreement regarding their dispute.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) "Mediation communication" means a statement, whether oral or in a  
2 record or verbal or nonverbal, that occurs during a mediation or is made  
3 for purposes of considering, conducting, participating in, initiating,  
4 continuing, or reconvening a mediation or retaining a mediator.

5 (c) "Mediator" means an individual who conducts a mediation.

6 (d) "Mediation party" means a person that participates in a mediation  
7 and whose agreement is necessary to resolve the dispute.

8 (e) "Nonparty participant" means a person, other than a party or medi-  
9 ator, that participates in a mediation.

10 (f) "Person" means an individual, corporation, business trust, estate,  
11 trust, partnership, limited liability company, association, joint  
12 venture, government, governmental subdivision, agency, or instrumentali-  
13 ty, public corporation, or any other legal or commercial entity.

14 (g) "Proceeding" means:

15 (1) a judicial, administrative, arbitral, or other adjudicative proc-  
16 ess, including related pre-hearing and post-hearing motions, confer-  
17 ences, and discovery; or

18 (2) a legislative hearing or similar process.

19 (h) "Record" means information that is inscribed on a tangible medium  
20 or that is stored in an electronic or other medium and is retrievable in  
21 perceivable form.

22 (i) "Sign" means:

23 (1) to execute or adopt a tangible symbol with the present intent to  
24 authenticate a record; or

25 (2) to attach or logically associate an electronic symbol, sound, or  
26 process to or with a record with the present intent to authenticate a  
27 record.

28 § 7402. Scope. (a) Except as otherwise provided in subdivision (b) or  
29 (c), this article applies to a mediation in which:

30 (1) the mediation parties are required to mediate by statute or court  
31 or administrative agency rule or referred to mediation by a court,  
32 administrative agency, or arbitrator;

33 (2) the mediation parties and the mediator agree to mediate in a  
34 record that demonstrates an expectation that mediation communications  
35 will be privileged against disclosure; or

36 (3) the mediation parties use as a mediator an individual who holds  
37 himself or herself out as a mediator, or the mediation is provided by a  
38 person that holds itself out as providing mediation.

39 (b) This article does not apply to a mediation:

40 (1) relating to the establishment, negotiation, administration, or  
41 termination of a collective bargaining relationship;

42 (2) relating to a dispute that is pending under or is part of the  
43 processes established by a collective bargaining agreement, except that  
44 this article shall apply to a mediation arising out of a dispute that  
45 has been filed with an administrative agency or court;

46 (3) conducted by a judge who might make a ruling on the case; or

47 (4) conducted under the auspices of:

48 (i) a primary or secondary school if all the parties are students; or

49 (ii) a correctional institution for youths if all the parties are  
50 residents of that institution.

51 (c) If the parties agree in advance in a signed record, or a record of  
52 proceeding so reflects, that all or part of a mediation is not privi-  
53 leged, the privileges under sections 7403, 7404 and 7405 do not apply to  
54 the mediation or part agreed upon. However, section 7403 applies to a  
55 mediation communication made by a person that has not received actual  
56 notice of the agreement before the communication is made.

