

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5173

Chapter 172, Laws of 2005

59th Legislature
2005 Regular Session

UNIFORM MEDIATION ACT

EFFECTIVE DATE: 1/1/06

Passed by the Senate March 2, 2005
YEAS 47 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House April 6, 2005
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5173** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved April 22, 2005.

FILED

April 22, 2005 - 4:31 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5173

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Johnson, Weinstein, Esser and Kline)

READ FIRST TIME 02/04/05.

1 AN ACT Relating to the uniform mediation act; amending RCW
2 5.60.070, 5.60.072, 7.75.050, 26.09.015, 35.63.260, and 48.43.055;
3 reenacting and amending RCW 42.17.310; adding a new chapter to Title 7
4 RCW; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** TITLE. This act may be cited as the Uniform
7 Mediation Act.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

9 (1) "Mediation" means a process in which a mediator facilitates
10 communication and negotiation between parties to assist them in
11 reaching a voluntary agreement regarding their dispute.

12 (2) "Mediation communication" means a statement, whether oral or in
13 a record or verbal or nonverbal, that occurs during a mediation or is
14 made for purposes of considering, conducting, participating in,
15 initiating, continuing, or reconvening a mediation or retaining a
16 mediator.

17 (3) "Mediator" means an individual who conducts a mediation.

1 (4) "Nonparty participant" means a person, other than a party or
2 mediator, that participates in a mediation.

3 (5) "Mediation party" means a person that participates in a
4 mediation and whose agreement is necessary to resolve the dispute.

5 (6) "Person" means an individual, corporation, business trust,
6 estate, trust, partnership, limited liability company, association,
7 joint venture, government; governmental subdivision, agency, or
8 instrumentality; or public corporation, or any other legal or
9 commercial entity.

10 (7) "Proceeding" means:

11 (a) A judicial, administrative, arbitral, or other adjudicative
12 process, including related prehearing and posthearing motions,
13 conferences, and discovery; or

14 (b) A legislative hearing or similar process.

15 (8) "Record" means information that is inscribed on a tangible
16 medium or that is stored in an electronic or other medium and is
17 retrievable in perceivable form.

18 (9) "Sign" means:

19 (a) To execute or adopt a tangible symbol with the present intent
20 to authenticate a record; or

21 (b) To attach or logically associate an electronic symbol, sound,
22 or process to or with a record with the present intent to authenticate
23 a record.

24 NEW SECTION. **Sec. 3.** SCOPE. (1) Except as otherwise provided in
25 subsection (2) or (3) of this section, this chapter applies to a
26 mediation in which:

27 (a) The mediation parties are required to mediate by statute or
28 court or administrative agency rule or referred to mediation by a
29 court, administrative agency, or arbitrator;

30 (b) The mediation parties and the mediator agree to mediate in a
31 record that demonstrates an expectation that mediation communications
32 will be privileged against disclosure; or

33 (c) The mediation parties use as a mediator an individual who holds
34 himself or herself out as a mediator or the mediation is provided by a
35 person that holds itself out as providing mediation.

36 (2) This chapter does not apply to a mediation:

37 (a) Conducted by a judge who might make a ruling on the case; or

1 (b) Conducted under the auspices of:

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

3 or

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

6 (3) If the parties agree in advance in a signed record, or a record
7 of proceeding reflects agreement by the parties, that all or part of a
8 mediation is not privileged, the privileges under sections 4 through 6
9 of this act do not apply to the mediation or part agreed upon.
10 However, sections 4 through 6 of this act apply to a mediation
11 communication made by a person that has not received actual notice of
12 the agreement before the communication is made.

13 NEW SECTION. **Sec. 4.** PRIVILEGE AGAINST DISCLOSURE; ADMISSIBILITY;
14 DISCOVERY. (1) Except as otherwise provided in section 6 of this act,
15 a mediation communication is privileged as provided in subsection (2)
16 of this section and is not subject to discovery or admissible in
17 evidence in a proceeding unless waived or precluded as provided by
18 section 5 of this act.

19 (2) In a proceeding, the following privileges apply:

20 (a) A mediation party may refuse to disclose, and may prevent any
21 other person from disclosing, a mediation communication;

22 (b) A mediator may refuse to disclose a mediation communication,
23 and may prevent any other person from disclosing a mediation
24 communication of the mediator; and

25 (c) A nonparty participant may refuse to disclose, and may prevent
26 any other person from disclosing, a mediation communication of the
27 nonparty participant.

28 (3) Evidence or information that is otherwise admissible or subject
29 to discovery does not become inadmissible or protected from discovery
30 solely by reason of its disclosure or use in a mediation.

31 NEW SECTION. **Sec. 5.** WAIVER AND PRECLUSION OF PRIVILEGE. (1) A
32 privilege under section 4 of this act may be waived in a record or
33 orally during a proceeding if it is expressly waived by all parties to
34 the mediation and:

35 (a) In the case of the privilege of a mediator, it is expressly
36 waived by the mediator; and

1 (b) In the case of the privilege of a nonparty participant, it is
2 expressly waived by the nonparty participant.

3 (2) A person that discloses or makes a representation about a
4 mediation communication which prejudices another person in a proceeding
5 is precluded from asserting a privilege under section 4 of this act,
6 but only to the extent necessary for the person prejudiced to respond
7 to the representation or disclosure.

8 (3) A person that intentionally uses a mediation to plan, attempt
9 to commit, or commit a crime, or to conceal an ongoing crime or ongoing
10 criminal activity is precluded from asserting a privilege under section
11 4 of this act.

12 NEW SECTION. **Sec. 6.** EXCEPTIONS TO PRIVILEGE. (1) There is no
13 privilege under section 4 of this act for a mediation communication
14 that is:

15 (a) In an agreement evidenced by a record signed by all parties to
16 the agreement;

17 (b) Made during a session of a mediation which is open, or is
18 required by law to be open, to the public;

19 (c) A threat or statement of a plan to inflict bodily injury or
20 commit a crime of violence;

21 (d) Intentionally used to plan a crime, attempt to commit or commit
22 a crime, or to conceal an ongoing crime or ongoing criminal activity;

23 (e) Sought or offered to prove or disprove a claim or complaint of
24 professional misconduct or malpractice filed against a mediator;

25 (f) Except as otherwise provided in subsection (3) of this section,
26 sought or offered to prove or disprove a claim or complaint of
27 professional misconduct or malpractice filed against a mediation party,
28 nonparty participant, or representative of a party based on conduct
29 occurring during a mediation; or

30 (g) Sought or offered to prove or disprove abuse, neglect,
31 abandonment, or exploitation in a proceeding in which a child or adult
32 protective services agency is a party, unless the public agency
33 participates in the child or adult protection mediation.

34 (2) There is no privilege under section 4 of this act if a court
35 finds, after a hearing in camera, that the party seeking discovery or
36 the proponent of the evidence has shown that the evidence is not

1 otherwise available, that there is a need for the evidence that
2 substantially outweighs the interest in protecting confidentiality, and
3 that the mediation communication is sought or offered in:

4 (a) A criminal court proceeding involving a felony; or

5 (b) Except as otherwise provided in subsection (3) of this section,
6 a proceeding to prove a claim to rescind or reform or a defense to
7 avoid liability on a contract arising out of the mediation.

8 (3) A mediator may not be compelled to provide evidence of a
9 mediation communication referred to in subsection (1)(f) or (2)(b) of
10 this section.

11 (4) If a mediation communication is not privileged under subsection
12 (1) or (2) of this section, only the portion of the communication
13 necessary for the application of the exception from nondisclosure may
14 be admitted. Admission of evidence under subsection (1) or (2) of this
15 section does not render the evidence, or any other mediation
16 communication, discoverable or admissible for any other purpose.

17 (5) Records of mediation communications that are privileged under
18 this chapter are exempt from the requirements of chapter 42.17 RCW.

19 NEW SECTION. **Sec. 7.** PROHIBITED MEDIATOR REPORTS. (1) Except as
20 provided in subsection (2) of this section, a mediator may not make a
21 report, assessment, evaluation, recommendation, finding, or other
22 communication regarding a mediation to a court, administrative agency,
23 or other authority that may make a ruling on the dispute that is the
24 subject of the mediation.

25 (2) A mediator may disclose:

26 (a) Whether the mediation occurred or has terminated, whether a
27 settlement was reached, attendance, and efforts to schedule a mediation
28 ordered by a court, administrative agency, or other authority that may
29 make a ruling on the dispute;

30 (b) A mediation communication as permitted under section 6 of this
31 act; or

32 (c) A mediation communication evidencing abuse, neglect,
33 abandonment, or exploitation of an individual to a public agency
34 responsible for protecting individuals against such mistreatment.

35 (3) A communication made in violation of subsection (1) of this
36 section may not be considered by a court, administrative agency, or
37 arbitrator.

1 NEW SECTION. **Sec. 8.** CONFIDENTIALITY. Unless subject to chapter
2 42.30 RCW, mediation communications are confidential to the extent
3 agreed by the parties or provided by other law or rule of this state.

4 NEW SECTION. **Sec. 9.** MEDIATOR'S DISCLOSURE OF CONFLICTS OF
5 INTEREST; BACKGROUND. (1) Before accepting a mediation, an individual
6 who is requested to serve as a mediator shall:

7 (a) Make an inquiry that is reasonable under the circumstances to
8 determine whether there are any known facts that a reasonable
9 individual would consider likely to affect the impartiality of the
10 mediator, including a financial or personal interest in the outcome of
11 the mediation and an existing or past relationship with a mediation
12 party or foreseeable participant in the mediation; and

13 (b) Disclose any such known fact to the mediation parties as soon
14 as is practical before accepting a mediation.

15 (2) If a mediator learns any fact described in subsection (1)(a) of
16 this section after accepting a mediation, the mediator shall disclose
17 it as soon as is practicable.

18 (3) At the request of a mediation party, an individual who is
19 requested to serve as a mediator shall disclose the mediator's
20 qualifications to mediate a dispute.

21 (4) A person that violates subsection (1) or (2) of this section is
22 precluded by the violation from asserting a privilege under section 4
23 of this act.

24 (5) Subsections (1) through (3) of this section do not apply to an
25 individual acting as a judge.

26 (6) This chapter does not require that a mediator have a special
27 qualification by background or profession.

28 NEW SECTION. **Sec. 10.** PARTICIPATION IN MEDIATION. An attorney or
29 other individual designated by a party may accompany the party to and
30 participate in a mediation, except that if the dispute being mediated
31 is the subject of pending proceedings under chapter 12.40 RCW, then a
32 party may not be represented by an attorney in mediation unless the
33 party may be represented by an attorney in the proceedings under
34 chapter 12.40 RCW. A waiver of participation given before the
35 mediation may be rescinded.

1 NEW SECTION. **Sec. 11.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
2 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
3 supersedes the federal electronic signatures in global and national
4 commerce act (15 U.S.C. Sec. 7001 et seq.), but this chapter does not
5 modify, limit, or supersede section 101(c) of that act or authorize
6 electronic delivery of any of the notices described in section 103(b)
7 of that act.

8 NEW SECTION. **Sec. 12.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
9 In applying and construing this chapter, consideration should be given
10 to the need to promote uniformity of the law with respect to its
11 subject matter among states that enact it.

12 **Sec. 13.** RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are
13 each reenacted and amended to read as follows:

14 (1) The following are exempt from public inspection and copying:

15 (a) Personal information in any files maintained for students in
16 public schools, patients or clients of public institutions or public
17 health agencies, or welfare recipients.

18 (b) Personal information in files maintained for employees,
19 appointees, or elected officials of any public agency to the extent
20 that disclosure would violate their right to privacy.

21 (c) Information required of any taxpayer in connection with the
22 assessment or collection of any tax if the disclosure of the
23 information to other persons would (i) be prohibited to such persons by
24 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
25 taxpayer's right to privacy or result in unfair competitive
26 disadvantage to the taxpayer.

27 (d) Specific intelligence information and specific investigative
28 records compiled by investigative, law enforcement, and penology
29 agencies, and state agencies vested with the responsibility to
30 discipline members of any profession, the nondisclosure of which is
31 essential to effective law enforcement or for the protection of any
32 person's right to privacy.

33 (e) Information revealing the identity of persons who are witnesses
34 to or victims of crime or who file complaints with investigative, law
35 enforcement, or penology agencies, other than the public disclosure
36 commission, if disclosure would endanger any person's life, physical

1 safety, or property. If at the time a complaint is filed the
2 complainant, victim or witness indicates a desire for disclosure or
3 nondisclosure, such desire shall govern. However, all complaints filed
4 with the public disclosure commission about any elected official or
5 candidate for public office must be made in writing and signed by the
6 complainant under oath.

7 (f) Test questions, scoring keys, and other examination data used
8 to administer a license, employment, or academic examination.

9 (g) Except as provided by chapter 8.26 RCW, the contents of real
10 estate appraisals, made for or by any agency relative to the
11 acquisition or sale of property, until the project or prospective sale
12 is abandoned or until such time as all of the property has been
13 acquired or the property to which the sale appraisal relates is sold,
14 but in no event shall disclosure be denied for more than three years
15 after the appraisal.

16 (h) Valuable formulae, designs, drawings, computer source code or
17 object code, and research data obtained by any agency within five years
18 of the request for disclosure when disclosure would produce private
19 gain and public loss.

20 (i) Preliminary drafts, notes, recommendations, and intra-agency
21 memorandums in which opinions are expressed or policies formulated or
22 recommended except that a specific record shall not be exempt when
23 publicly cited by an agency in connection with any agency action.

24 (j) Records which are relevant to a controversy to which an agency
25 is a party but which records would not be available to another party
26 under the rules of pretrial discovery for causes pending in the
27 superior courts.

28 (k) Records, maps, or other information identifying the location of
29 archaeological sites in order to avoid the looting or depredation of
30 such sites.

31 (l) Any library record, the primary purpose of which is to maintain
32 control of library materials, or to gain access to information, which
33 discloses or could be used to disclose the identity of a library user.

34 (m) Financial information supplied by or on behalf of a person,
35 firm, or corporation for the purpose of qualifying to submit a bid or
36 proposal for (i) a ferry system construction or repair contract as
37 required by RCW 47.60.680 through 47.60.750 or (ii) highway
38 construction or improvement as required by RCW 47.28.070.

1 (n) Railroad company contracts filed prior to July 28, 1991, with
2 the utilities and transportation commission under RCW 81.34.070, except
3 that the summaries of the contracts are open to public inspection and
4 copying as otherwise provided by this chapter.

5 (o) Financial and commercial information and records supplied by
6 private persons pertaining to export services provided pursuant to
7 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
8 export projects pursuant to RCW 43.23.035.

9 (p) Financial disclosures filed by private vocational schools under
10 chapters 28B.85 and 28C.10 RCW.

11 (q) Records filed with the utilities and transportation commission
12 or attorney general under RCW 80.04.095 that a court has determined are
13 confidential under RCW 80.04.095.

14 (r) Financial and commercial information and records supplied by
15 businesses or individuals during application for loans or program
16 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
17 or during application for economic development loans or program
18 services provided by any local agency.

19 (s) Membership lists or lists of members or owners of interests of
20 units in timeshare projects, subdivisions, camping resorts,
21 condominiums, land developments, or common-interest communities
22 affiliated with such projects, regulated by the department of
23 licensing, in the files or possession of the department.

24 (t) All applications for public employment, including the names of
25 applicants, resumes, and other related materials submitted with respect
26 to an applicant.

27 (u) The residential addresses or residential telephone numbers of
28 employees or volunteers of a public agency which are held by any public
29 agency in personnel records, public employment related records, or
30 volunteer rosters, or are included in any mailing list of employees or
31 volunteers of any public agency.

32 (v) The residential addresses and residential telephone numbers of
33 the customers of a public utility contained in the records or lists
34 held by the public utility of which they are customers, except that
35 this information may be released to the division of child support or
36 the agency or firm providing child support enforcement for another
37 state under Title IV-D of the federal social security act, for the
38 establishment, enforcement, or modification of a support order.

1 (w)(i) The federal social security number of individuals governed
2 under chapter 18.130 RCW maintained in the files of the department of
3 health, except this exemption does not apply to requests made directly
4 to the department from federal, state, and local agencies of
5 government, and national and state licensing, credentialing,
6 investigatory, disciplinary, and examination organizations; (ii) the
7 current residential address and current residential telephone number of
8 a health care provider governed under chapter 18.130 RCW maintained in
9 the files of the department, if the provider requests that this
10 information be withheld from public inspection and copying, and
11 provides to the department an accurate alternate or business address
12 and business telephone number. On or after January 1, 1995, the
13 current residential address and residential telephone number of a
14 health care provider governed under RCW 18.130.040 maintained in the
15 files of the department shall automatically be withheld from public
16 inspection and copying unless the provider specifically requests the
17 information be released, and except as provided for under RCW
18 42.17.260(9).

19 (x) Information obtained by the board of pharmacy as provided in
20 RCW 69.45.090.

21 (y) Information obtained by the board of pharmacy or the department
22 of health and its representatives as provided in RCW 69.41.044,
23 69.41.280, and 18.64.420.

24 (z) Financial information, business plans, examination reports, and
25 any information produced or obtained in evaluating or examining a
26 business and industrial development corporation organized or seeking
27 certification under chapter 31.24 RCW.

28 (aa) Financial and commercial information supplied to the state
29 investment board by any person when the information relates to the
30 investment of public trust or retirement funds and when disclosure
31 would result in loss to such funds or in private loss to the providers
32 of this information.

33 (bb) Financial and valuable trade information under RCW 51.36.120.

34 (cc) Client records maintained by an agency that is a domestic
35 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
36 crisis center as defined in RCW 70.125.030.

37 (dd) Information that identifies a person who, while an agency
38 employee: (i) Seeks advice, under an informal process established by

1 the employing agency, in order to ascertain his or her rights in
2 connection with a possible unfair practice under chapter 49.60 RCW
3 against the person; and (ii) requests his or her identity or any
4 identifying information not be disclosed.

5 (ee) Investigative records compiled by an employing agency
6 conducting a current investigation of a possible unfair practice under
7 chapter 49.60 RCW or of a possible violation of other federal, state,
8 or local laws prohibiting discrimination in employment.

9 (ff) Business related information protected from public inspection
10 and copying under RCW 15.86.110.

11 (gg) Financial, commercial, operations, and technical and research
12 information and data submitted to or obtained by the clean Washington
13 center in applications for, or delivery of, program services under
14 chapter 70.95H RCW.

15 (hh) Information and documents created specifically for, and
16 collected and maintained by a quality improvement committee pursuant to
17 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
18 4.24.250, regardless of which agency is in possession of the
19 information and documents.

20 (ii) Personal information in files maintained in a data base
21 created under RCW 43.07.360.

22 (jj) Financial and commercial information requested by the public
23 stadium authority from any person or organization that leases or uses
24 the stadium and exhibition center as defined in RCW 36.102.010.

25 (kk) Names of individuals residing in emergency or transitional
26 housing that are furnished to the department of revenue or a county
27 assessor in order to substantiate a claim for property tax exemption
28 under RCW 84.36.043.

29 (ll) The names, residential addresses, residential telephone
30 numbers, and other individually identifiable records held by an agency
31 in relation to a vanpool, carpool, or other ride-sharing program or
32 service. However, these records may be disclosed to other persons who
33 apply for ride-matching services and who need that information in order
34 to identify potential riders or drivers with whom to share rides.

35 (mm) The personally identifying information of current or former
36 participants or applicants in a paratransit or other transit service
37 operated for the benefit of persons with disabilities or elderly
38 persons.

1 (nn) The personally identifying information of persons who acquire
2 and use transit passes and other fare payment media including, but not
3 limited to, stored value smart cards and magnetic strip cards, except
4 that an agency may disclose this information to a person, employer,
5 educational institution, or other entity that is responsible, in whole
6 or in part, for payment of the cost of acquiring or using a transit
7 pass or other fare payment media, or to the news media when reporting
8 on public transportation or public safety. This information may also
9 be disclosed at the agency's discretion to governmental agencies or
10 groups concerned with public transportation or public safety.

11 (oo) Proprietary financial and commercial information that the
12 submitting entity, with review by the department of health,
13 specifically identifies at the time it is submitted and that is
14 provided to or obtained by the department of health in connection with
15 an application for, or the supervision of, an antitrust exemption
16 sought by the submitting entity under RCW 43.72.310. If a request for
17 such information is received, the submitting entity must be notified of
18 the request. Within ten business days of receipt of the notice, the
19 submitting entity shall provide a written statement of the continuing
20 need for confidentiality, which shall be provided to the requester.
21 Upon receipt of such notice, the department of health shall continue to
22 treat information designated under this section as exempt from
23 disclosure. If the requester initiates an action to compel disclosure
24 under this chapter, the submitting entity must be joined as a party to
25 demonstrate the continuing need for confidentiality.

26 (pp) Records maintained by the board of industrial insurance
27 appeals that are related to appeals of crime victims' compensation
28 claims filed with the board under RCW 7.68.110.

29 (qq) Financial and commercial information supplied by or on behalf
30 of a person, firm, corporation, or entity under chapter 28B.95 RCW
31 relating to the purchase or sale of tuition units and contracts for the
32 purchase of multiple tuition units.

33 (rr) Any records of investigative reports prepared by any state,
34 county, municipal, or other law enforcement agency pertaining to sex
35 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
36 defined in RCW 71.09.020, which have been transferred to the Washington
37 association of sheriffs and police chiefs for permanent electronic
38 retention and retrieval pursuant to RCW 40.14.070(2)(b).

1 (ss) Credit card numbers, debit card numbers, electronic check
2 numbers, card expiration dates, or bank or other financial account
3 numbers, except when disclosure is expressly required by or governed by
4 other law.

5 (tt) Financial information, including but not limited to account
6 numbers and values, and other identification numbers supplied by or on
7 behalf of a person, firm, corporation, limited liability company,
8 partnership, or other entity related to an application for a liquor
9 license, gambling license, or lottery retail license.

10 (uu) Records maintained by the employment security department and
11 subject to chapter 50.13 RCW if provided to another individual or
12 organization for operational, research, or evaluation purposes.

13 (vv) Individually identifiable information received by the work
14 force training and education coordinating board for research or
15 evaluation purposes.

16 (ww) Those portions of records assembled, prepared, or maintained
17 to prevent, mitigate, or respond to criminal terrorist acts, which are
18 acts that significantly disrupt the conduct of government or of the
19 general civilian population of the state or the United States and that
20 manifest an extreme indifference to human life, the public disclosure
21 of which would have a substantial likelihood of threatening public
22 safety, consisting of:

23 (i) Specific and unique vulnerability assessments or specific and
24 unique response or deployment plans, including compiled underlying data
25 collected in preparation of or essential to the assessments, or to the
26 response or deployment plans; and

27 (ii) Records not subject to public disclosure under federal law
28 that are shared by federal or international agencies, and information
29 prepared from national security briefings provided to state or local
30 government officials related to domestic preparedness for acts of
31 terrorism.

32 (xx) Commercial fishing catch data from logbooks required to be
33 provided to the department of fish and wildlife under RCW 77.12.047,
34 when the data identifies specific catch location, timing, or
35 methodology and the release of which would result in unfair competitive
36 disadvantage to the commercial fisher providing the catch data.
37 However, this information may be released to government agencies
38 concerned with the management of fish and wildlife resources.

1 (yy) Sensitive wildlife data obtained by the department of fish and
2 wildlife. However, sensitive wildlife data may be released to
3 government agencies concerned with the management of fish and wildlife
4 resources. Sensitive wildlife data includes:

5 (i) The nesting sites or specific locations of endangered species
6 designated under RCW 77.12.020, or threatened or sensitive species
7 classified by rule of the department of fish and wildlife;

8 (ii) Radio frequencies used in, or locational data generated by,
9 telemetry studies; or

10 (iii) Other location data that could compromise the viability of a
11 specific fish or wildlife population, and where at least one of the
12 following criteria are met:

13 (A) The species has a known commercial or black market value;

14 (B) There is a history of malicious take of that species; or

15 (C) There is a known demand to visit, take, or disturb, and the
16 species behavior or ecology renders it especially vulnerable or the
17 species has an extremely limited distribution and concentration.

18 (zz) The personally identifying information of persons who acquire
19 recreational licenses under RCW 77.32.010 or commercial licenses under
20 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
21 department, and type of license, endorsement, or tag. However, the
22 department of fish and wildlife may disclose personally identifying
23 information to:

24 (i) Government agencies concerned with the management of fish and
25 wildlife resources;

26 (ii) The department of social and health services, child support
27 division, and to the department of licensing in order to implement RCW
28 77.32.014 and 46.20.291; and

29 (iii) Law enforcement agencies for the purpose of firearm
30 possession enforcement under RCW 9.41.040.

31 (aaa)(i) Discharge papers of a veteran of the armed forces of the
32 United States filed at the office of the county auditor before July 1,
33 2002, that have not been commingled with other recorded documents.
34 These records will be available only to the veteran, the veteran's next
35 of kin, a deceased veteran's properly appointed personal representative
36 or executor, a person holding that veteran's general power of attorney,
37 or to anyone else designated in writing by that veteran to receive the
38 records.

1 (ii) Discharge papers of a veteran of the armed forces of the
2 United States filed at the office of the county auditor before July 1,
3 2002, that have been commingled with other records, if the veteran has
4 recorded a "request for exemption from public disclosure of discharge
5 papers" with the county auditor. If such a request has been recorded,
6 these records may be released only to the veteran filing the papers,
7 the veteran's next of kin, a deceased veteran's properly appointed
8 personal representative or executor, a person holding the veteran's
9 general power of attorney, or anyone else designated in writing by the
10 veteran to receive the records.

11 (iii) Discharge papers of a veteran filed at the office of the
12 county auditor after June 30, 2002, are not public records, but will be
13 available only to the veteran, the veteran's next of kin, a deceased
14 veteran's properly appointed personal representative or executor, a
15 person holding the veteran's general power of attorney, or anyone else
16 designated in writing by the veteran to receive the records.

17 (iv) For the purposes of this subsection (1)(aaa), next of kin of
18 deceased veterans have the same rights to full access to the record.
19 Next of kin are the veteran's widow or widower who has not remarried,
20 son, daughter, father, mother, brother, and sister.

21 (bbb) Those portions of records containing specific and unique
22 vulnerability assessments or specific and unique emergency and escape
23 response plans at a city, county, or state adult or juvenile
24 correctional facility, the public disclosure of which would have a
25 substantial likelihood of threatening the security of a city, county,
26 or state adult or juvenile correctional facility or any individual's
27 safety.

28 (ccc) Information compiled by school districts or schools in the
29 development of their comprehensive safe school plans pursuant to RCW
30 28A.320.125, to the extent that they identify specific vulnerabilities
31 of school districts and each individual school.

32 (ddd) Information regarding the infrastructure and security of
33 computer and telecommunications networks, consisting of security
34 passwords, security access codes and programs, access codes for secure
35 software applications, security and service recovery plans, security
36 risk assessments, and security test results to the extent that they
37 identify specific system vulnerabilities.

1 (eee) Information obtained and exempted or withheld from public
2 inspection by the health care authority under RCW 41.05.026, whether
3 retained by the authority, transferred to another state purchased
4 health care program by the authority, or transferred by the authority
5 to a technical review committee created to facilitate the development,
6 acquisition, or implementation of state purchased health care under
7 chapter 41.05 RCW.

8 (fff) Proprietary data, trade secrets, or other information that
9 relates to: (i) A vendor's unique methods of conducting business; (ii)
10 data unique to the product or services of the vendor; or (iii)
11 determining prices or rates to be charged for services, submitted by
12 any vendor to the department of social and health services for purposes
13 of the development, acquisition, or implementation of state purchased
14 health care as defined in RCW 41.05.011.

15 (ggg) Records of mediation communications that are privileged under
16 chapter 7.-- RCW (sections 1 through 12 and 20 through 23 of this act).

17 (2) Except for information described in subsection (1)(c)(i) of
18 this section and confidential income data exempted from public
19 inspection pursuant to RCW 84.40.020, the exemptions of this section
20 are inapplicable to the extent that information, the disclosure of
21 which would violate personal privacy or vital governmental interests,
22 can be deleted from the specific records sought. No exemption may be
23 construed to permit the nondisclosure of statistical information not
24 descriptive of any readily identifiable person or persons.

25 (3) Inspection or copying of any specific records exempt under the
26 provisions of this section may be permitted if the superior court in
27 the county in which the record is maintained finds, after a hearing
28 with notice thereof to every person in interest and the agency, that
29 the exemption of such records is clearly unnecessary to protect any
30 individual's right of privacy or any vital governmental function.

31 (4) Agency responses refusing, in whole or in part, inspection of
32 any public record shall include a statement of the specific exemption
33 authorizing the withholding of the record (or part) and a brief
34 explanation of how the exemption applies to the record withheld.

35 **Sec. 14.** RCW 5.60.070 and 1993 c 492 s 422 are each amended to
36 read as follows:

37 (1) If there is a court order to mediate, a written agreement

1 between the parties to mediate, or if mediation is mandated under RCW
2 7.70.100, then any communication made or materials submitted in, or in
3 connection with, the mediation proceeding, whether made or submitted to
4 or by the mediator, a mediation organization, a party, or any person
5 present, are privileged and confidential and are not subject to
6 disclosure in any judicial or administrative proceeding except:

7 (a) When all parties to the mediation agree, in writing, to
8 disclosure;

9 (b) When the written materials or tangible evidence are otherwise
10 subject to discovery, and were not prepared specifically for use in and
11 actually used in the mediation proceeding;

12 (c) When a written agreement to mediate permits disclosure;

13 (d) When disclosure is mandated by statute;

14 (e) When the written materials consist of a written settlement
15 agreement or other agreement signed by the parties resulting from a
16 mediation proceeding;

17 (f) When those communications or written materials pertain solely
18 to administrative matters incidental to the mediation proceeding,
19 including the agreement to mediate; or

20 (g) In a subsequent action between the mediator and a party to the
21 mediation arising out of the mediation.

22 (2) When there is a court order, a written agreement to mediate, or
23 when mediation is mandated under RCW 7.70.100, as described in
24 subsection (1) of this section, the mediator or a representative of a
25 mediation organization shall not testify in any judicial or
26 administrative proceeding unless:

27 (a) All parties to the mediation and the mediator agree in writing;
28 or

29 (b) In an action described in subsection (1)(g) of this section.

30 (3) Beginning on January 1, 2006, this section governs only
31 mediations pursuant to a referral or an agreement made before January
32 1, 2006. Mediations pursuant to a referral or an agreement made on or
33 after January 1, 2006, are governed by chapter 7.-- RCW (sections 1
34 through 12 and 20 through 23 of this act).

35 **Sec. 15.** RCW 5.60.072 and 1991 c 321 s 2 are each amended to read
36 as follows:

37 Notwithstanding the provisions of RCW 5.60.070 and chapter 7.-- RCW

1 (sections 1 through 12 and 20 through 23 of this act), when any party
2 participates in mediation conducted by a state or federal agency under
3 the provisions of a collective bargaining law or similar statute, the
4 agency's rules govern questions of privilege and confidentiality.

5 **Sec. 16.** RCW 7.75.050 and 1984 c 258 s 505 are each amended to
6 read as follows:

7 Regardless of any provision to the contrary in chapter 42.17 RCW,
8 all memoranda, work notes or products, or case files of centers
9 established under this chapter are confidential and privileged and are
10 not subject to disclosure in any judicial or administrative proceeding
11 unless the court or administrative tribunal determines that the
12 materials were submitted by a participant to the center for the purpose
13 of avoiding discovery of the material in a subsequent proceeding.
14 ~~((Any communication relating to the subject matter of the resolution~~
15 ~~made during the resolution process by any participant, mediator, or any~~
16 ~~other person is a privileged communication and is not subject to~~
17 ~~disclosure in any judicial or administrative proceeding unless all~~
18 ~~parties to the communication waive the privilege. The foregoing~~
19 ~~privilege and limitation on evidentiary use does not apply to any~~
20 ~~communication of a threat that injury or damage may be inflicted on any~~
21 ~~person or on the property of a party to the dispute, to the extent the~~
22 ~~communication may be relevant evidence in a criminal matter.)) In all
23 other respects, chapter 7.-- RCW, (sections 1 through 12 and 20 through
24 23 of this act), shall govern the privilege and confidentiality to be
25 accorded to communications made in conjunction with a mediation
26 conducted by a dispute resolution center established under this
27 chapter.~~

28 **Sec. 17.** RCW 26.09.015 and 1991 c 367 s 2 are each amended to read
29 as follows:

30 (1) In any proceeding under this chapter, the matter may be set for
31 mediation of the contested issues before or concurrent with the setting
32 of the matter for hearing. The purpose of the mediation proceeding
33 shall be to reduce acrimony which may exist between the parties and to
34 develop an agreement assuring the child's close and continuing contact
35 with both parents after the marriage is dissolved. The mediator shall
36 use his or her best efforts to effect a settlement of the dispute.

1 (2) Each superior court may make available a mediator. The
2 mediator may be a member of the professional staff of a family court or
3 mental health services agency, or may be any other person or agency
4 designated by the court. In order to provide mediation services, the
5 court is not required to institute a family court.

6 (3)(a) ~~Mediation proceedings under this chapter shall be ((held in~~
7 ~~private and shall be confidential. The mediator shall not testify as~~
8 ~~to any aspect of the mediation proceedings. This subsection shall not~~
9 ~~apply to postdecree mediation required pursuant to a parenting plan))~~
10 governed in all respects by chapter 7.-- RCW (sections 1 through 12 and
11 20 through 23 of this act), except as follows:

12 (i) Mediation communications in postdecree mediations mandated by
13 a parenting plan are admissible in subsequent proceedings for the
14 limited purpose of proving:

15 (A) Abuse, neglect, abandonment, exploitation, or unlawful
16 harassment as defined in RCW 9A.46.020(1), of a child;

17 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of
18 a family or household member as defined in RCW 26.50.010(2); or

19 (C) That a parent used or frustrated the dispute resolution process
20 without good reason for purposes of RCW 26.09.184(3)(d).

21 (ii) If a postdecree mediation-arbitration proceeding is required
22 pursuant to a parenting plan and the same person acts as both mediator
23 and arbitrator, mediation communications in the mediation phase of such
24 a proceeding may be admitted during the arbitration phase, and shall be
25 admissible in the judicial review of such a proceeding under RCW
26 26.09.184(3)(e) to the extent necessary for such review to be
27 effective.

28 (b) None of the exceptions under (a)(i) and (ii) of this subsection
29 shall subject a mediator to compulsory process to testify except by
30 court order for good cause shown, taking into consideration the need
31 for the mediator's testimony and the interest in the mediator
32 maintaining an appearance of impartiality. If a mediation
33 communication is not privileged under (a)(i) of this subsection or that
34 portion of (a)(ii) of this subsection pertaining to judicial review,
35 only the portion of the communication necessary for the application of
36 the exception may be admitted, and such admission of evidence shall not
37 render any other mediation communication discoverable or admissible

1 except as may be provided in chapter 7.-- RCW (sections 1 through 12
2 and 20 through 23 of this act).

3 (4) The mediator shall assess the needs and interests of the child
4 or children involved in the controversy and may interview the child or
5 children if the mediator deems such interview appropriate or necessary.

6 (5) Any agreement reached by the parties as a result of mediation
7 shall be reported to the court and to counsel for the parties by the
8 mediator on the day set for mediation or any time thereafter designated
9 by the court.

10 **Sec. 18.** RCW 35.63.260 and 1998 c 119 s 1 are each amended to read
11 as follows:

12 (1) Prior to filing an appeal of a final decision by a hearing
13 examiner involving a conditional or special use permit application
14 requested by a party that is licensed or certified by the department of
15 social and health services or the department of corrections, the
16 aggrieved party must, within five days after the final decision,
17 initiate formal mediation procedures in an attempt to resolve the
18 parties' differences. If, after initial evaluation of the dispute, the
19 parties agree to proceed with a mediation, the mediation shall be
20 conducted by a trained mediator selected by agreement of the parties.
21 The agreement to mediate shall be in writing and subject to ((RCW
22 5.60.070)) chapter 7.-- RCW (sections 1 through 12 and 20 through 23 of
23 this act. If the parties are unable to agree on a mediator, each party
24 shall nominate a mediator and the mediator shall be selected by lot
25 from among the nominees. The mediator must be selected within five
26 days after formal mediation procedures are initiated. The mediation
27 process must be completed within fourteen days from the time the
28 mediator is selected except that the mediation process may extend
29 beyond fourteen days by agreement of the parties. The mediator shall,
30 within the fourteen-day period or within the extension if an extension
31 is agreed to, provide the parties with a written summary of the issues
32 and any agreements reached. If the parties agree, the mediation report
33 shall be made available to the governing jurisdiction. The cost of the
34 mediation shall be shared by the parties.

35 (2) Any time limits for filing of appeals are tolled during the
36 pendency of the mediation process.

1 (3) As used in this section, "party" does not include county, city,
2 or town.

3 **Sec. 19.** RCW 48.43.055 and 2002 c 300 s 6 are each amended to read
4 as follows:

5 Each health carrier as defined under RCW 48.43.005 shall file with
6 the commissioner its procedures for review and adjudication of
7 complaints initiated by health care providers. Procedures filed under
8 this section shall provide a fair review for consideration of
9 complaints. Every health carrier shall provide reasonable means
10 allowing any health care provider aggrieved by actions of the health
11 carrier to be heard after submitting a written request for review. If
12 the health carrier fails to grant or reject a request within thirty
13 days after it is made, the complaining health care provider may proceed
14 as if the complaint had been rejected. A complaint that has been
15 rejected by the health carrier may be submitted to nonbinding
16 mediation. Mediation shall be conducted under (~~mediation rules~~
17 ~~similar to those of the American arbitration association, the center~~
18 ~~for public resources, the judicial arbitration and mediation service,~~
19 ~~RCW 7.70.100~~) chapter 7.-- RCW (sections 1 through 12 and 20 through
20 23 of this act, or any other rules of mediation agreed to by the
21 parties. This section is solely for resolution of provider complaints.
22 Complaints by, or on behalf of, a covered person are subject to the
23 grievance processes in RCW 48.43.530.

24 NEW SECTION. **Sec. 20.** CAPTIONS NOT LAW. Captions used in this
25 act are not any part of the law.

26 NEW SECTION. **Sec. 21.** SEVERABILITY CLAUSE. If any provision of
27 this act or its application to any person or circumstance is held
28 invalid, the remainder of the act or the application of the provision
29 to other persons or circumstances is not affected.

30 NEW SECTION. **Sec. 22.** APPLICATION TO EXISTING AGREEMENTS OR
31 REFERRALS. (1) This chapter governs a mediation pursuant to a referral
32 or an agreement to mediate made on or after January 1, 2006.

33 (2) If all parties agree in a signed record or a record of

1 proceeding reflects such an agreement by all parties, then this
2 chapter governs a mediation pursuant to a referral or an agreement to
3 mediate whenever made.

4 NEW SECTION. **Sec. 23.** EFFECTIVE DATE. This act takes effect
5 January 1, 2006.

6 NEW SECTION. **Sec. 24.** Sections 1 through 12 and 20 through 23 of
7 this act constitute a new chapter in Title 7 RCW.

Passed by the Senate March 2, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.