

SSB 5173 - S AMD 17

By Senators Kline, Johnson

ADOPTED 03/02/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** TITLE. This act may be cited as the
4 Uniform Mediation Act.

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

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

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

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

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

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

19 (6) "Person" means an individual, corporation, business trust,
20 estate, trust, partnership, limited liability company, association,
21 joint venture, government; governmental subdivision, agency, or
22 instrumentality; or public corporation, or any other legal or
23 commercial entity.

24 (7) "Proceeding" means:

25 (a) A judicial, administrative, arbitral, or other adjudicative
26 process, including related prehearing and posthearing motions,
27 conferences, and discovery; or

28 (b) A legislative hearing or similar process.

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

4 (9) "Sign" means:

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

7 (b) To attach or logically associate an electronic symbol, sound,
8 or process to or with a record with the present intent to authenticate
9 a record.

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

13 (a) The mediation parties are required to mediate by statute or
14 court or administrative agency rule or referred to mediation by a
15 court, administrative agency, or arbitrator;

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

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

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

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

24 (b) Conducted under the auspices of:

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

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

29 (3) If the parties agree in advance in a signed record, or a record
30 of proceeding reflects agreement by the parties, that all or part of a
31 mediation is not privileged, the privileges under sections 4 through 6
32 of this act do not apply to the mediation or part agreed upon.
33 However, sections 4 through 6 of this act apply to a mediation
34 communication made by a person that has not received actual notice of
35 the agreement before the communication is made.

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

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

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

10 (b) A mediator may refuse to disclose a mediation communication,
11 and may prevent any other person from disclosing a mediation
12 communication of the mediator; and

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

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

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

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

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

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

32 (3) A person that intentionally uses a mediation to plan, attempt
33 to commit, or commit a crime, or to conceal an ongoing crime or ongoing
34 criminal activity is precluded from asserting a privilege under section
35 4 of this act.

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

4 (a) In an agreement evidenced by a record signed by all parties to
5 the agreement;

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

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

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

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

14 (f) Except as otherwise provided in subsection (3) of this section,
15 sought or offered to prove or disprove a claim or complaint of
16 professional misconduct or malpractice filed against a mediation party,
17 nonparty participant, or representative of a party based on conduct
18 occurring during a mediation; or

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

23 (2) There is no privilege under section 4 of this act if a court
24 finds, after a hearing in camera, that the party seeking discovery or
25 the proponent of the evidence has shown that the evidence is not
26 otherwise available, that there is a need for the evidence that
27 substantially outweighs the interest in protecting confidentiality, and
28 that the mediation communication is sought or offered in:

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

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

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

36 (4) If a mediation communication is not privileged under subsection
37 (1) or (2) of this section, only the portion of the communication
38 necessary for the application of the exception from nondisclosure may

1 be admitted. Admission of evidence under subsection (1) or (2) of this
2 section does not render the evidence, or any other mediation
3 communication, discoverable or admissible for any other purpose.

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

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

12 (2) A mediator may disclose:

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

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

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

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

25 NEW SECTION. **Sec. 8.** CONFIDENTIALITY. Unless subject to chapter
26 42.30 RCW, mediation communications are confidential to the extent
27 agreed by the parties or provided by other law or rule of this state.

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

31 (a) Make an inquiry that is reasonable under the circumstances to
32 determine whether there are any known facts that a reasonable
33 individual would consider likely to affect the impartiality of the
34 mediator, including a financial or personal interest in the outcome of

1 the mediation and an existing or past relationship with a mediation
2 party or foreseeable participant in the mediation; and

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

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

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

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

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

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

18 NEW SECTION. **Sec. 10.** PARTICIPATION IN MEDIATION. An attorney or
19 other individual designated by a party may accompany the party to and
20 participate in a mediation, except that if the dispute being mediated
21 is the subject of pending proceedings under chapter 12.40 RCW, then a
22 party may not be represented by an attorney in mediation unless the
23 party may be represented by an attorney in the proceedings under
24 chapter 12.40 RCW. A waiver of participation given before the
25 mediation may be rescinded.

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

33 NEW SECTION. **Sec. 12.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
34 In applying and construing this chapter, consideration should be given

1 to the need to promote uniformity of the law with respect to its
2 subject matter among states that enact it.

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

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

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

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

12 (c) Information required of any taxpayer in connection with the
13 assessment or collection of any tax if the disclosure of the
14 information to other persons would (i) be prohibited to such persons by
15 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
16 taxpayer's right to privacy or result in unfair competitive
17 disadvantage to the taxpayer.

18 (d) Specific intelligence information and specific investigative
19 records compiled by investigative, law enforcement, and penology
20 agencies, and state agencies vested with the responsibility to
21 discipline members of any profession, the nondisclosure of which is
22 essential to effective law enforcement or for the protection of any
23 person's right to privacy.

24 (e) Information revealing the identity of persons who are witnesses
25 to or victims of crime or who file complaints with investigative, law
26 enforcement, or penology agencies, other than the public disclosure
27 commission, if disclosure would endanger any person's life, physical
28 safety, or property. If at the time a complaint is filed the
29 complainant, victim or witness indicates a desire for disclosure or
30 nondisclosure, such desire shall govern. However, all complaints filed
31 with the public disclosure commission about any elected official or
32 candidate for public office must be made in writing and signed by the
33 complainant under oath.

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

36 (g) Except as provided by chapter 8.26 RCW, the contents of real
37 estate appraisals, made for or by any agency relative to the

1 acquisition or sale of property, until the project or prospective sale
2 is abandoned or until such time as all of the property has been
3 acquired or the property to which the sale appraisal relates is sold,
4 but in no event shall disclosure be denied for more than three years
5 after the appraisal.

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

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

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

18 (k) Records, maps, or other information identifying the location of
19 archaeological sites in order to avoid the looting or depredation of
20 such sites.

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

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

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

33 (o) Financial and commercial information and records supplied by
34 private persons pertaining to export services provided pursuant to
35 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
36 export projects pursuant to RCW 43.23.035.

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

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

4 (r) Financial and commercial information and records supplied by
5 businesses or individuals during application for loans or program
6 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
7 or during application for economic development loans or program
8 services provided by any local agency.

9 (s) Membership lists or lists of members or owners of interests of
10 units in timeshare projects, subdivisions, camping resorts,
11 condominiums, land developments, or common-interest communities
12 affiliated with such projects, regulated by the department of
13 licensing, in the files or possession of the department.

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

17 (u) The residential addresses or residential telephone numbers of
18 employees or volunteers of a public agency which are held by any public
19 agency in personnel records, public employment related records, or
20 volunteer rosters, or are included in any mailing list of employees or
21 volunteers of any public agency.

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

29 (w)(i) The federal social security number of individuals governed
30 under chapter 18.130 RCW maintained in the files of the department of
31 health, except this exemption does not apply to requests made directly
32 to the department from federal, state, and local agencies of
33 government, and national and state licensing, credentialing,
34 investigatory, disciplinary, and examination organizations; (ii) the
35 current residential address and current residential telephone number of
36 a health care provider governed under chapter 18.130 RCW maintained in
37 the files of the department, if the provider requests that this
38 information be withheld from public inspection and copying, and

1 provides to the department an accurate alternate or business address
2 and business telephone number. On or after January 1, 1995, the
3 current residential address and residential telephone number of a
4 health care provider governed under RCW 18.130.040 maintained in the
5 files of the department shall automatically be withheld from public
6 inspection and copying unless the provider specifically requests the
7 information be released, and except as provided for under RCW
8 42.17.260(9).

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

11 (y) Information obtained by the board of pharmacy or the department
12 of health and its representatives as provided in RCW 69.41.044,
13 69.41.280, and 18.64.420.

14 (z) Financial information, business plans, examination reports, and
15 any information produced or obtained in evaluating or examining a
16 business and industrial development corporation organized or seeking
17 certification under chapter 31.24 RCW.

18 (aa) Financial and commercial information supplied to the state
19 investment board by any person when the information relates to the
20 investment of public trust or retirement funds and when disclosure
21 would result in loss to such funds or in private loss to the providers
22 of this information.

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

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

27 (dd) Information that identifies a person who, while an agency
28 employee: (i) Seeks advice, under an informal process established by
29 the employing agency, in order to ascertain his or her rights in
30 connection with a possible unfair practice under chapter 49.60 RCW
31 against the person; and (ii) requests his or her identity or any
32 identifying information not be disclosed.

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

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

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

5 (hh) Information and documents created specifically for, and
6 collected and maintained by a quality improvement committee pursuant to
7 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
8 4.24.250, regardless of which agency is in possession of the
9 information and documents.

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

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

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

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

25 (mm) The personally identifying information of current or former
26 participants or applicants in a paratransit or other transit service
27 operated for the benefit of persons with disabilities or elderly
28 persons.

29 (nn) The personally identifying information of persons who acquire
30 and use transit passes and other fare payment media including, but not
31 limited to, stored value smart cards and magnetic strip cards, except
32 that an agency may disclose this information to a person, employer,
33 educational institution, or other entity that is responsible, in whole
34 or in part, for payment of the cost of acquiring or using a transit
35 pass or other fare payment media, or to the news media when reporting
36 on public transportation or public safety. This information may also
37 be disclosed at the agency's discretion to governmental agencies or
38 groups concerned with public transportation or public safety.

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

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

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

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

29 (ss) Credit card numbers, debit card numbers, electronic check
30 numbers, card expiration dates, or bank or other financial account
31 numbers, except when disclosure is expressly required by or governed by
32 other law.

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

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

4 (vv) Individually identifiable information received by the work
5 force training and education coordinating board for research or
6 evaluation purposes.

7 (ww) Those portions of records assembled, prepared, or maintained
8 to prevent, mitigate, or respond to criminal terrorist acts, which are
9 acts that significantly disrupt the conduct of government or of the
10 general civilian population of the state or the United States and that
11 manifest an extreme indifference to human life, the public disclosure
12 of which would have a substantial likelihood of threatening public
13 safety, consisting of:

14 (i) Specific and unique vulnerability assessments or specific and
15 unique response or deployment plans, including compiled underlying data
16 collected in preparation of or essential to the assessments, or to the
17 response or deployment plans; and

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

23 (xx) Commercial fishing catch data from logbooks required to be
24 provided to the department of fish and wildlife under RCW 77.12.047,
25 when the data identifies specific catch location, timing, or
26 methodology and the release of which would result in unfair competitive
27 disadvantage to the commercial fisher providing the catch data.
28 However, this information may be released to government agencies
29 concerned with the management of fish and wildlife resources.

30 (yy) Sensitive wildlife data obtained by the department of fish and
31 wildlife. However, sensitive wildlife data may be released to
32 government agencies concerned with the management of fish and wildlife
33 resources. Sensitive wildlife data includes:

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

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

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

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

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

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

9 (zz) The personally identifying information of persons who acquire
10 recreational licenses under RCW 77.32.010 or commercial licenses under
11 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
12 department, and type of license, endorsement, or tag. However, the
13 department of fish and wildlife may disclose personally identifying
14 information to:

15 (i) Government agencies concerned with the management of fish and
16 wildlife resources;

17 (ii) The department of social and health services, child support
18 division, and to the department of licensing in order to implement RCW
19 77.32.014 and 46.20.291; and

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

22 (aaa)(i) Discharge papers of a veteran of the armed forces of the
23 United States filed at the office of the county auditor before July 1,
24 2002, that have not been commingled with other recorded documents.
25 These records will be available only to the veteran, the veteran's next
26 of kin, a deceased veteran's properly appointed personal representative
27 or executor, a person holding that veteran's general power of attorney,
28 or to anyone else designated in writing by that veteran to receive the
29 records.

30 (ii) Discharge papers of a veteran of the armed forces of the
31 United States filed at the office of the county auditor before July 1,
32 2002, that have been commingled with other records, if the veteran has
33 recorded a "request for exemption from public disclosure of discharge
34 papers" with the county auditor. If such a request has been recorded,
35 these records may be released only to the veteran filing the papers,
36 the veteran's next of kin, a deceased veteran's properly appointed
37 personal representative or executor, a person holding the veteran's

1 general power of attorney, or anyone else designated in writing by the
2 veteran to receive the records.

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

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

13 (bbb) Those portions of records containing specific and unique
14 vulnerability assessments or specific and unique emergency and escape
15 response plans at a city, county, or state adult or juvenile
16 correctional facility, the public disclosure of which would have a
17 substantial likelihood of threatening the security of a city, county,
18 or state adult or juvenile correctional facility or any individual's
19 safety.

20 (ccc) Information compiled by school districts or schools in the
21 development of their comprehensive safe school plans pursuant to RCW
22 28A.320.125, to the extent that they identify specific vulnerabilities
23 of school districts and each individual school.

24 (ddd) Information regarding the infrastructure and security of
25 computer and telecommunications networks, consisting of security
26 passwords, security access codes and programs, access codes for secure
27 software applications, security and service recovery plans, security
28 risk assessments, and security test results to the extent that they
29 identify specific system vulnerabilities.

30 (eee) Information obtained and exempted or withheld from public
31 inspection by the health care authority under RCW 41.05.026, whether
32 retained by the authority, transferred to another state purchased
33 health care program by the authority, or transferred by the authority
34 to a technical review committee created to facilitate the development,
35 acquisition, or implementation of state purchased health care under
36 chapter 41.05 RCW.

37 (fff) Proprietary data, trade secrets, or other information that
38 relates to: (i) A vendor's unique methods of conducting business; (ii)

1 data unique to the product or services of the vendor; or (iii)
2 determining prices or rates to be charged for services, submitted by
3 any vendor to the department of social and health services for purposes
4 of the development, acquisition, or implementation of state purchased
5 health care as defined in RCW 41.05.011.

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

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

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

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

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

28 (1) If there is a court order to mediate, a written agreement
29 between the parties to mediate, or if mediation is mandated under RCW
30 7.70.100, then any communication made or materials submitted in, or in
31 connection with, the mediation proceeding, whether made or submitted to
32 or by the mediator, a mediation organization, a party, or any person
33 present, are privileged and confidential and are not subject to
34 disclosure in any judicial or administrative proceeding except:

35 (a) When all parties to the mediation agree, in writing, to
36 disclosure;

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

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

5 (d) When disclosure is mandated by statute;

6 (e) When the written materials consist of a written settlement
7 agreement or other agreement signed by the parties resulting from a
8 mediation proceeding;

9 (f) When those communications or written materials pertain solely
10 to administrative matters incidental to the mediation proceeding,
11 including the agreement to mediate; or

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

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

19 (a) All parties to the mediation and the mediator agree in writing;
20 or

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

22 (3) Beginning on January 1, 2006, this section governs only
23 mediations pursuant to a referral or an agreement made before January
24 1, 2006. Mediations pursuant to a referral or an agreement made on or
25 after January 1, 2006, are governed by chapter 7.-- RCW (sections 1
26 through 12 and 20 through 23 of this act).

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

29 Notwithstanding the provisions of RCW 5.60.070 and chapter 7.-- RCW
30 (sections 1 through 12 and 20 through 23 of this act), when any party
31 participates in mediation conducted by a state or federal agency under
32 the provisions of a collective bargaining law or similar statute, the
33 agency's rules govern questions of privilege and confidentiality.

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

36 Regardless of any provision to the contrary in chapter 42.17 RCW,

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

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

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

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

35 (3)(a) Mediation proceedings under this chapter shall be ~~((held in~~
36 ~~private and shall be confidential. The mediator shall not testify as~~
37 ~~to any aspect of the mediation proceedings. This subsection shall not~~

1 ~~apply to postdecree mediation required pursuant to a parenting plan))~~
2 governed in all respects by chapter 7.-- RCW (sections 1 through 12 and
3 20 through 23 of this act), except as follows:

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

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

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

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

13 (ii) If a postdecree mediation-arbitration proceeding is required
14 pursuant to a parenting plan and the same person acts as both mediator
15 and arbitrator, mediation communications in the mediation phase of such
16 a proceeding may be admitted during the arbitration phase, and shall be
17 admissible in the judicial review of such a proceeding under RCW
18 26.09.184(3)(e) to the extent necessary for such review to be
19 effective.

20 (b) None of the exceptions under (a)(i) and (ii) of this subsection
21 shall subject a mediator to compulsory process to testify except by
22 court order for good cause shown, taking into consideration the need
23 for the mediator's testimony and the interest in the mediator
24 maintaining an appearance of impartiality. If a mediation
25 communication is not privileged under (a)(i) of this subsection or that
26 portion of (a)(ii) of this subsection pertaining to judicial review,
27 only the portion of the communication necessary for the application of
28 the exception may be admitted, and such admission of evidence shall not
29 render any other mediation communication discoverable or admissible
30 except as may be provided in chapter 7.-- RCW (sections 1 through 12
31 and 20 through 23 of this act).

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

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

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

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

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

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

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

32 Each health carrier as defined under RCW 48.43.005 shall file with
33 the commissioner its procedures for review and adjudication of
34 complaints initiated by health care providers. Procedures filed under
35 this section shall provide a fair review for consideration of
36 complaints. Every health carrier shall provide reasonable means
37 allowing any health care provider aggrieved by actions of the health

1 carrier to be heard after submitting a written request for review. If
2 the health carrier fails to grant or reject a request within thirty
3 days after it is made, the complaining health care provider may proceed
4 as if the complaint had been rejected. A complaint that has been
5 rejected by the health carrier may be submitted to nonbinding
6 mediation. Mediation shall be conducted under (~~mediation rules~~
7 ~~similar to those of the American arbitration association, the center~~
8 ~~for public resources, the judicial arbitration and mediation service,~~
9 ~~RCW 7.70.100~~) chapter 7.-- RCW (sections 1 through 12 and 20 through
10 23 of this act, or any other rules of mediation agreed to by the
11 parties. This section is solely for resolution of provider complaints.
12 Complaints by, or on behalf of, a covered person are subject to the
13 grievance processes in RCW 48.43.530.

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

16 NEW SECTION. Sec. 21. SEVERABILITY CLAUSE. If any provision of
17 this act or its application to any person or circumstance is held
18 invalid, the remainder of the act or the application of the provision
19 to other persons or circumstances is not affected.

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

23 (2) If all parties agree in a signed record or a record of
24 proceeding reflects such an agreement by all parties, then this
25 chapter governs a mediation pursuant to a referral or an agreement to
26 mediate whenever made.

27 NEW SECTION. Sec. 23. EFFECTIVE DATE. This act takes effect
28 January 1, 2006.

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

SSB 5173 - S AMD 17

By Senators Kline, Johnson

ADOPTED 03/02/2005

1 On page 1, line 1 of the title, after "act;" strike the remainder
2 of the title and insert "amending RCW 5.60.070, 5.60.072, 7.75.050,
3 26.09.015, 35.63.260, and 48.43.055; reenacting and amending RCW
4 42.17.310; adding a new chapter to Title 7 RCW; and providing an
5 effective date."

--- END ---