

SENATE BILL REPORT

SB 5147

AS PASSED SENATE, MARCH 18, 1991

Brief Description: Protecting alternative dispute resolution processes and mediators and arbitrators from legal action.

SPONSORS: Senators Nelson, A. Smith and Newhouse.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Jack Brummel (786-7428)

Hearing Dates: January 24, 1991; February 5, 1991

HOUSE COMMITTEE ON JUDICIARY

BACKGROUND:

Mediation and other alternatives to trial are significant adjuncts to our legal system. The Revised Code of Washington refers to "mediation, mediator," or "mediating" disputes at least 37 times. Mediation works best when participants believe statements made will remain confidential. There is currently no statute or rule of evidence which controls dissemination of communications or material disclosed in mediation.

SUMMARY:

When parties to a dispute have a written agreement to mediate, or a court has ordered mediation, any materials submitted or communications made in connection with the mediation are privileged and not subject to disclosure in subsequent legal proceedings. Exceptions are made when the parties agree in writing to disclosure, when the materials are otherwise subject to discovery, when disclosure is required by statute, when the materials consist of written agreements reached through mediation, or when they pertain to administrative matters incidental to the mediation proceedings.

In an action between a mediator and a party to the mediation, materials submitted on communications made in the mediation may be disclosed and the mediator may be compelled to testify. In no other circumstances may the mediator be compelled to testify when there is a court order on a written agreement to mediate unless all parties to the mediation and the mediator agree in writing.

Appropriation: none

Revenue: none

Fiscal Note: none requested

Effective Date: The bill contains an emergency clause and takes effect immediately.

TESTIMONY FOR:

This bill has a broad spectrum of support from CPAs, lawyers, judges, and nonlawyer mediators. It encourages dispute resolution outside of the formal processes.

TESTIMONY AGAINST:

A written agreement to mediate can be hard to obtain when multiple parties are involved.

TESTIFIED: Claude Pearson, Diane Fitzgerald, WSBA (pro); Robert Manifold, AG's office (pro); Donna Morse, Medication Consortium of Washington (pro); Frank Gafne, NW Renewable Resources Center (con)

HOUSE AMENDMENT(S):

When a mediation is conducted by an agency using collective bargaining statutes, the agency's rules govern questions of privilege and confidentiality.