

SENATE BILL 5147

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, A. Smith and Newhouse.

Read first time January 22, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to mediator privilege, confidentiality, and
2 admissibility of evidence arising from mediation; adding a new section
3 to chapter 5.60 RCW; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 5.60 RCW
6 to read as follows:

7 (1) If there is a court order to mediate or a written agreement
8 between the parties to mediate, then any communication made or
9 materials submitted in, or in connection with, the mediation
10 proceeding, whether made or submitted to or by the mediator, a
11 mediation organization, a party, or any person present, are privileged
12 and confidential and are not subject to disclosure in any judicial or
13 administrative proceeding except:

14 (a) When all parties to the mediation agree, in writing, to
15 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 or written agreement to mediate as
15 described in subsection (1) of this section, the mediator or a
16 representative of a mediation organization shall not testify in any
17 judicial or administrative proceeding unless:

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

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

21 NEW SECTION. **Sec. 2.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect immediately.