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ENGROSSED SUBSTITUTE SENATE BILL 5173

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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 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.

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