



Ninety-Eighth Legislature - First Session - 2003
Introducer's Statement of Intent
LB 255

Chairperson: Kermit A. Brashear
Committee: Judiciary
Date of Hearing: January 30, 2003

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 255, the Uniform Mediation Act (UMA), promotes the increasingly important use of mediation as an appropriate means of dispute resolution, while also protecting the rights of participants in the mediation processes.

It will strengthen existing state laws and court rules by providing a strong mediation privilege that permits the parties, mediator, and non-party participants to prevent the use of mediation communications in legal proceedings that take place after the mediation. This privilege is consistent with the current trend of state law protections for mediation, and, if adopted uniformly, will assure that mediation communications in one state will not be subject to admissibility in another state

The protections of the Act will be available to mediation participants in almost all mediations in which the parties agreed to mediation or are directed into mediation by a court or other governmental entity. The only mediations that the Act will not apply to are those involving labor unions, student peer mediations, and judicial settlement conferences.

As a general matter, anyone who participates in a mediation will be able to prevent the statements they make from being used against them in later legal proceedings. Under the UMA, statements made in mediation are treated as inadmissible in much the same way that the law in most states bars the use of statements made to attorneys, doctors, and priests.

The UMA mediation privilege applies to bar the use of mediation communications in a wide range of proceedings that take place after the mediation, including civil and criminal trials, arbitrations, administrative hearings, and legislative "proceedings."

There are only limited exceptions to this general rule, for example to permit disclosures of threats of bodily harm, reports of abuse and neglect, and to establish that a mediation was used as a pretext to further a crime. To ensure the integrity of the mediation process, there are also limited exceptions that would permit a judge to admit mediation communications into evidence to establish that a mediated settlement agreement was induced by fraud or duress, or that the mediator engaged in professional malpractice or misconduct.

Relatedly, the Act further bars mediator disclosures to courts, administrative agencies, and other government entities.

The Act provides parties with the ability to be accompanied by a friend, family member, or lawyer, which is particularly important when a party is compelled into a mediation by a court or other governmental entity.

To further the integrity of the process, the UMA also requires the disclosure of conflicts of interest by a mediator, and requires a mediator to disclose his or her qualifications.

Principal Introducer:

Senator David M. Landis