

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

April 9, 2003

LB 255

make sure that our negotiation process is candid and, number two, to be able to promote the idea of getting to a settlement. In mediation, you have a third party to assist people in exactly the same process, and that person is the mediator. What this bill does is it takes the Uniform State Law Commissioners' idea and it makes it the rule in this state that when you use a mediator between two parties and you have a situation in which you're trying to settle the dispute, the statements made in the mediation are privileged, meaning they can't be used in a court. You can prove your case anyplace else other than, well, we got together and we talked it over in the mediation, in the middle of it they said this. That would become privileged. Now, the bill contains a list of circumstances in which this applies. It lists a set of circumstances when it doesn't apply, for example, in open arbitration or a collective bargaining agreement or where there's a judge who is doing a settlement conference. These kinds of things are not a mediation. By the way, there are mediations in schools. They're called peer mediation reviews and they're done by school children. Well, that's not covered by this law. There are also things that, if said, are not protected by this privilege, for example, a threat or a plan to commit a crime or to prove or disprove a claim of malpractice against the mediator, or to prove abuse, neglect or abandonment in the case of a child, so that there are limitations to when the privilege applies. The privilege applies not only to the mediator but also to the parties and to the nonparties present. They can waive it, if they wish, by written agreement, but all the parties need to participate in that. One of the things that the Uniform State Law Commissioners are trying to do here is to promote a standard practice that lawyers may assume to be the rules when dealing with mediation, and one of the reasons that they've done that is there are now 250 laws around the country on this subject. Better to have one law so that if you're a lawyer going from one jurisdiction to another you would essentially know what the rules are with respect to mediation. I would ask you to adopt the committee amendments. I think they've been well drafted, as is the usual course of conduct for the Judiciary Committee. There were no opponents in the bill. There was a list of proponents. The bill was advanced unanimously and, as I said, the State Bar Association and the mediators of this state worked on it over the summer and they