

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 338
SENATE BILL 1293

AN ACT

AMENDING SECTION 12-2238, ARIZONA REVISED STATUTES; RELATING TO PRIVILEGED COMMUNICATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-2238, Arizona Revised Statutes, is amended to
3 read:

4 12-2238. Mediation; privileged communications; exceptions;
5 liability; definitions

6 A. Before or after the filing of a complaint, mediation may occur
7 pursuant to law, a court order or a voluntary decision of the parties.

8 B. The mediation process is confidential. Communications made,
9 materials created for or used and acts occurring during a mediation are
10 confidential and may not be discovered or admitted into evidence unless one
11 of the following exceptions is met:

12 1. All of the parties to the mediation agree to the disclosure.

13 2. The communication, material or act is relevant to a claim or
14 defense made by a party to the mediation against the mediator or the
15 mediation program arising out of a breach of a legal obligation owed by the
16 mediator to the party.

17 3. The disclosure is required by statute.

18 4. The disclosure is necessary to enforce an agreement to mediate.

19 5. **THE DISCLOSURE IS MADE IN A REPORT TO A LAW ENFORCEMENT OFFICER,**
20 **THE DEPARTMENT OF CHILD SAFETY OR ADULT PROTECTIVE SERVICES BY A COURT**
21 **APPOINTED MEDIATOR WHO REASONABLY BELIEVES THAT A MINOR OR VULNERABLE ADULT**
22 **IS OR HAS BEEN A VICTIM OF ABUSE, CHILD ABUSE, NEGLECT, EXPLOITATION,**
23 **PHYSICAL INJURY OR A REPORTABLE OFFENSE.**

24 C. Except pursuant to subsection B, paragraph 2, 3, ~~or~~ **4 OR 5 OF THIS**
25 **SECTION**, a mediator is not subject to service of process or a subpoena to
26 produce evidence or to testify regarding any evidence or occurrence relating
27 to the mediation proceedings. Evidence that exists independently of the
28 mediation even if the evidence is used in connection with the mediation is
29 subject to service of process or subpoena.

30 D. Notwithstanding subsection B **OF THIS SECTION**, when necessary to
31 enforce or obtain approval of an agreement that is reached by the parties in
32 a mediation, the terms of an agreement that is evidenced by a record that is
33 signed by the parties are not confidential. The agreement may be introduced
34 in any proceeding to obtain court approval of the agreement, where required
35 by law, or to enforce the agreement. If a party requests that all or a
36 portion of the agreement remain confidential, the agreement may be disclosed
37 to the court under seal with a request to issue appropriate orders to protect
38 the confidentiality of the agreement, as permitted by law.

39 E. Notwithstanding subsection B **OF THIS SECTION**, threatened or actual
40 violence that occurs during a mediation is not a privileged communication.
41 The mediator may inform the parties that threatened or actual violence is not
42 privileged and may be disclosed.

43 F. A mediator is not subject to civil liability except for those acts
44 or omissions that involve intentional misconduct or reckless disregard of a
45 substantial risk of a significant injury to the rights of others.

46 G. For the purposes of this section:

- 1 1. "ABUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201 IF THE
2 VICTIM IS A MINOR OR SECTION 46-451 IF THE VICTIM IS A VULNERABLE ADULT.
- 3 2. "CHILD ABUSE" MEANS CHILD ABUSE PURSUANT TO SECTION 13-3623.
- 4 3. "EXPLOITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.
- 5 ~~1-~~ 4. "Mediation" means a process in which parties who are involved
6 in a dispute enter into one or more private settlement discussions outside of
7 a formal court proceeding with a neutral third party to try to resolve the
8 dispute.
- 9 5. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201 IF THE
10 VICTIM IS A MINOR OR SECTION 46-451 IF THE VICTIM IS A VULNERABLE ADULT.
- 11 6. "PHYSICAL INJURY" HAS THE SAME MEANING PRESCRIBED IN SECTION
12 13-105.
- 13 ~~2-~~ 7. "Record" means information that is inscribed on a tangible
14 medium or that is stored in an electronic or other medium and that is
15 retrievable in a perceivable form.
- 16 8. "REPORTABLE OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION
17 13-3620.
- 18 ~~3-~~ 9. "Sign" means to execute or adopt a tangible symbol with the
19 present intent to authenticate a record or to attach or logically associate
20 an electronic symbol, sound or process to or with a record with the present
21 intent to authenticate a record.
- 22 10. "VULNERABLE ADULT" HAS THE SAME MEANING PRESCRIBED IN SECTION
23 13-3623.

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.