

2A:23C-1 to 2A:23C-13

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 157

NJSA: 2A:23C-1 to 2A:23C-13 ("Uniform Mediation Act")

BILL NO: S679 (Substituted for A841)

SPONSOR(S): Martin and others

DATE INTRODUCED: January 26, 2004

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** October 7, 2004

SENATE: February 23, 2004

DATE OF APPROVAL: November 22, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Original version of bill enacted

S679

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A841

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:

Yes

974.901 New Jersey. Law Revision Commission.
L446 Annual Report...2001. February 1, 2002. Trenton, NJ
2001
(See pp.10-11 and Appendix C)

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2004, CHAPTER 157, *approved November 22, 2004*
Senate, No. 679

1 AN ACT creating the "Uniform Mediation Act" and supplementing
2 Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This Act shall be known and may be cited as the "Uniform
8 Mediation Act."

9

10 2. Definitions. As used in this act:

11 "Mediation" means a process in which a mediator facilitates
12 communication and negotiation between parties to assist them in
13 reaching a voluntary agreement regarding their dispute.

14 "Mediation communication" means a statement, whether verbal or
15 nonverbal or in a record, that occurs during a mediation or is made for
16 purposes of considering, conducting, participating in, initiating,
17 continuing, or reconvening a mediation or retaining a mediator. A
18 mediation communication shall not be deemed to be a public record
19 under P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
20 supplemented by P.L.2001, c.404 (C.47:1A-5 et seq.).

21 "Mediator" means an individual who conducts a mediation.

22 "Nonparty participant" means a person, other than a party or
23 mediator, who participates in a mediation.

24 "Mediation party" means a person who participates in a mediation
25 and whose agreement is necessary to resolve the dispute.

26 "Person" means an individual; corporation; business trust; estate;
27 trust; partnership; limited liability company; association; joint venture;
28 government; governmental subdivision, agency, or instrumentality;
29 public corporation, or any other legal or commercial entity.

30 "Proceeding" means a judicial, administrative, arbitral, or other
31 adjudicative process, including related pre-hearing and post-hearing
32 motions, conferences, and discovery; or a legislative hearing or similar
33 process.

34 "Record" means information that is inscribed on a tangible medium
35 or that is stored in an electronic or other medium and is retrievable in
36 perceivable form.

37 "Sign" means to execute or adopt a tangible symbol with the
38 present intent to authenticate a record, or to attach or logically
39 associate an electronic symbol, sound, or process to or with a record
40 with the present intent to authenticate a record.

1 3. Scope.

2 a. Except as otherwise provided in subsection b. or c., this act shall
3 apply to a mediation in which:

4 (1) the mediation parties are required to mediate by statute, court
5 rule or administrative agency rule, or are referred to mediation by a
6 court, administrative agency, or arbitrator;

7 (2) the mediation parties and the mediator agree to mediate in a
8 record that demonstrates an expectation that mediation
9 communications will be privileged against disclosure; or

10 (3) the mediation parties use as a mediator an individual who holds
11 himself out as a mediator, or the mediation is provided by a person
12 who holds itself out as providing mediation.

13 b. The act shall not apply to a mediation:

14 (1) relating to the establishment, negotiation, administration, or
15 termination of a collective bargaining relationship or to any mediation
16 conducted by the Public Employment Relations Commission or the
17 State Board of Mediation;

18 (2) relating to a dispute that is pending under or is part of the
19 processes established by a collective bargaining agreement, except that
20 the act applies to a mediation arising out of a dispute that has been
21 filed with a court or an administrative agency other than the Public
22 Employment Relations Commission or the State Board of Mediation;

23 (3) conducted by a judge who may make a ruling on the case; or

24 (4) conducted under the auspices of:

25 (a) a primary or secondary school if all the parties are students; or

26 (b) a juvenile detention facility or shelter if all the parties are
27 residents of that facility or shelter.

28 c. If the parties agree in advance in a signed record, or a record of
29 proceeding so reflects, that all or part of a mediation is not privileged,
30 the privileges under sections 4 through 6 of P.L. , c. (C.)
31 (now pending before the Legislature as sections 4 through 6 of this
32 bill) shall not apply to the mediation or part agreed upon. Sections 4
33 through 6 of P.L. , c. (C.) (now pending before the Legislature
34 as sections 4 through 6 of this bill) shall apply to a mediation
35 communication made by a person who has not received actual notice
36 of the agreement before the communication is made.

37

38 4. Privilege against Disclosure; Admissibility; Discovery.

39 a. Except as otherwise provided in section 6 of P.L. , c. (C.)
40 (now pending before the Legislature as section 6 of this bill), a
41 mediation communication is privileged as provided in subsection b. of
42 this section and shall not be subject to discovery or admissible in
43 evidence in a proceeding unless waived or precluded as provided by
44 section 5 of P.L. , c. (C.) (now pending before the Legislature
45 as section 5 of this bill).

46 b. In a proceeding, the following privileges shall apply:

1 (1) a mediation party may refuse to disclose, and may prevent any
2 other person from disclosing, a mediation communication.

3 (2) a mediator may refuse to disclose a mediation communication,
4 and may prevent any other person from disclosing a mediation
5 communication of the mediator.

6 (3) a nonparty participant may refuse to disclose, and may prevent
7 any other person from disclosing, a mediation communication of the
8 nonparty participant.

9 c. Evidence or information that is otherwise admissible or subject
10 to discovery shall not become inadmissible or protected from
11 discovery solely by reason of its disclosure or use in a mediation.

12

13 5. Waiver and Preclusion of Privilege.

14 a. A privilege under section 4 of P.L. , c. (C.) (now pending
15 before the Legislature as section 4 of this bill) may be waived in a
16 record or orally during a proceeding if it is expressly waived by all
17 parties to the mediation and:

18 (1) in the case of the privilege of a mediator, it is expressly waived
19 by the mediator; and

20 (2) in the case of the privilege of a nonparty participant, it is
21 expressly waived by the nonparty participant.

22 b. A person who discloses or makes a representation about a
23 mediation communication that prejudices another person in a
24 proceeding is precluded from asserting a privilege under section 4 of
25 P.L. , c. (C.) (now pending before the Legislature as section 4 of
26 this bill), but only to the extent necessary for the person prejudiced to
27 respond to the representation or disclosure.

28 c. A person who intentionally uses a mediation to plan, attempt to
29 commit or commit a crime, or to conceal an ongoing crime or ongoing
30 criminal activity is precluded from asserting a privilege under section
31 4 of P.L. , c. (C.) (now pending before the Legislature as section
32 4 of this bill).

33

34 6. Exceptions to Privilege.

35 a. There is no privilege under section 4 of P.L. , c. (C.)
36 (now pending before the Legislature as section 4 of this bill) for a
37 mediation communication that is:

38 (1) in an agreement evidenced by a record signed by all parties to
39 the agreement;

40 (2) made during a session of a mediation that is open, or is
41 required by law to be open, to the public;

42 (3) a threat or statement of a plan to inflict bodily injury or commit
43 a crime;

44 (4) intentionally used to plan a crime, attempt to commit a crime,
45 or to conceal an ongoing crime or ongoing criminal activity;

46 (5) sought or offered to prove or disprove a claim or complaint

1 filed against a mediator arising out of a mediation;

2 (6) except as otherwise provided in subsection c., sought or
3 offered to prove or disprove a claim or complaint of professional
4 misconduct or malpractice filed against a mediation party, nonparty
5 participant, or representative of a party based on conduct occurring
6 during a mediation; or

7 (7) sought or offered to prove or disprove child abuse or neglect
8 in a proceeding in which the Division of Youth and Family Services in
9 the Department of Human Services is a party, unless the Division of
10 Youth and Family Services participates in the mediation.

11 b. There is no privilege under section 4 of P.L. , c. (C.)
12 (now pending before the Legislature as section 4 of this bill) if a court,
13 administrative agency, or arbitrator finds, after a hearing in camera,
14 that the party seeking discovery or the proponent of the evidence has
15 shown that the evidence is not otherwise available, that there is a need
16 for the evidence that substantially outweighs the interest in protecting
17 confidentiality, and that the mediation communication is sought or
18 offered in:

19 (1) a court proceeding involving a crime as defined in the "New
20 Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq.; or

21 (2) except as otherwise provided in subsection c., a proceeding to
22 prove a claim to rescind or reform or a defense to avoid liability on a
23 contract arising out of the mediation.

24 c. A mediator may not be compelled to provide evidence of a
25 mediation communication referred to in paragraph (6) of subsection a.
26 or paragraph (2) of subsection b.

27 d. If a mediation communication is not privileged under subsection
28 a. or b., only the portion of the communication necessary for the
29 application of the exception from nondisclosure may be admitted.
30 Admission of evidence under subsection a. or b. does not render the
31 evidence, or any other mediation communication, discoverable or
32 admissible for any other purpose.

33

34 7. Prohibited mediator reports.

35 a. Except as required in subsection b., a mediator may not make a
36 report, assessment, evaluation, recommendation, finding, or other oral
37 or written communication regarding a mediation to a court,
38 administrative agency, or other authority that may make a ruling on
39 the dispute that is the subject of the mediation.

40 b. A mediator may disclose:

41 (1) whether the mediation occurred or has terminated, whether a
42 settlement was reached, and attendance; or

43 (2) a mediation communication as permitted under section 6 of
44 P.L. , c. (C.)(now pending before the Legislature as section 6 of
45 this bill);

46 c. A communication made in violation of subsection a. may not be

1 considered by a court, administrative agency, or arbitrator.

2

3 8. Confidentiality.

4 Unless made during a session of a mediation which is open, or is
5 required by law to be open, to the public, mediation communications
6 are confidential to the extent agreed by the parties or provided by
7 other law or rule of this State.

8 9. Mediator's Disclosure of Conflicts of Interest; Background.

9 a. Before accepting a mediation, an individual who is requested to
10 serve as a mediator shall:

11 (1) make an inquiry that is reasonable under the circumstances to
12 determine whether there are any known facts that a reasonable
13 individual would consider likely to affect the impartiality of the
14 mediator, including a financial or personal interest in the outcome of
15 the mediation and an existing or past relationship with a mediation
16 party or foreseeable participant in the mediation; and

17 (2) disclose any such known fact to the mediation parties as soon
18 as is practicable before accepting a mediation.

19 b. If a mediator learns any fact described in paragraph (1) of
20 subsection a. after accepting a mediation, the mediator shall disclose
21 it as soon as is practicable.

22 c. At the request of a mediation party, an individual who is
23 requested to serve as a mediator shall disclose the mediator's
24 qualifications to mediate a dispute.

25 d. A person who violates subsection a., b., or g. shall be
26 precluded by the violation from asserting a privilege under section 4
27 of P.L. , c. (C.) (now pending before the Legislature as section 4
28 of this bill), but only to the extent necessary to prove the violation.

29 e. Subsections a, b., c., and g. do not apply to a judge of any court
30 of this State acting as a mediator.

31 f. This act does not require that a mediator have a special
32 qualification by background or profession.

33 g. A mediator shall be impartial, notwithstanding disclosure of the
34 facts required in subsections a. and b.

35

36 10. Participation in Mediation.

37 An attorney or other individual designated by a party may
38 accompany the party to and participate in a mediation. A waiver of
39 representation or participation given before the mediation may be
40 rescinded.

41

42 11. Relation to Electronic Signatures in Global and National
43 Commerce Act.

44 This act modifies, limits, or supersedes the federal Electronic
45 Signatures in Global and National Commerce Act, 15 U.S.C. Section
46 7001 et seq., but this act does not modify, limit, or supersede Section

1 101(c) of that act or authorize electronic delivery of any of the notices
2 described in Section 103(b) of that act.

3
4 12. Uniformity of application and construction.

5 In applying and construing this act, consideration shall be given to
6 the need to promote uniformity of the law with respect to its subject
7 matter among states that enact it.

8
9 13. Severability clause.

10 If any provision of P.L. , c. (C.)(now pending before the
11 Legislature as this bill) or its application to any person or circumstance
12 is held invalid, the invalidity does not affect other provisions or
13 applications of this act which can be given effect without the invalid
14 provision or application, and to this end the provisions of this act are
15 severable.

16
17 14. This act shall take effect immediately and shall apply to any
18 agreements to mediate made on or after the effective date of this act.

19
20
21 STATEMENT

22
23 This bill enacts the "Uniform Mediation Act" (UMA) which
24 establishes uniform standards and procedures for mediation and
25 mediators. The National Conference of Commissioners of Uniform
26 State Laws (NCCUSL) proposed the UMA. This uniform act has been
27 approved by the New Jersey Law Revision Commission, the New
28 Jersey Association of Professional Mediators and the New Jersey State
29 Bar Association.

30 By establishing these uniform guidelines for mediation, it is the
31 sponsor's intent to protect all individuals who choose to resolve their
32 disputes through either court ordered mediation or voluntarily
33 undertaken mediation where the parties and mediator expect that
34 mediation communications will be privileged against disclosure.

35 The bill would not apply to collective bargaining, settlement
36 conferences with a judge who may make a ruling on the case and peer
37 mediation in schools when all the parties are students. This bill would
38 explicitly exempt from its coverage mediation conducted by the Public
39 Employment Relations Commission or the State Board of Mediation
40 pursuant to the regulations of these labor relations agencies.

41 This bill would establish a privilege for mediation communications.
42 Under the provisions of the bill, mediators and parties to a mediation
43 may refuse to reveal, and may prevent the mediator or another party
44 from disclosing, mediation communications. The mediator and the
45 parties may expressly waive their privilege, except that the parties may
46 not waive the privilege of the mediator or any other party, and the

1 mediator may not waive the privilege of any party. The privilege is
2 also subject to enumerated exceptions. However, even if a mediator
3 waives the privilege the mediator cannot disclose what parties said in
4 the mediation unless the parties consent or unless the communication
5 falls under one of the specified exceptions to the privilege.

6 There is no privilege for a mediation communication that is in an
7 agreement evidenced by a record that is signed by the parties.
8 Privilege is not available with regard to a mediation session that is, or
9 is required to be, held in public. Nor is there privilege with regard to
10 any mediation communication that is a plan to commit a crime or a
11 threat to commit a crime or a threat to inflict bodily injury. There is
12 no privilege to conceal a mediation communication sought to be used
13 to either prove or disprove child abuse. In a court proceeding
14 involving a crime or a proceeding contesting the enforcement of an
15 agreement that resulted from a mediation the court may set aside the
16 privilege if the evidence is not otherwise available and if the need for
17 the evidence substantially outweighs the interest in protecting
18 confidentiality.

19 This bill prohibits mediators from making a report, assessment,
20 recommendation or oral or written communication to a court that
21 would rule on the matter, unless the mediator and the parties consent.

22 The bill would provide that all mediation communications are
23 confidential to the extent agreed by the parties or provided under the
24 law. The bill would also require mediators to make reasonable inquiry
25 to determine whether there are any known facts that might reasonably
26 be understood to affect their impartiality. The mediator would be
27 required to disclose any known fact to the mediation parties before
28 accepting a mediation, or as soon as practicable if such fact is
29 discovered after accepting a mediation.

30 Any party to mediation may be accompanied by an attorney or any
31 other individual designated by a party.

32

33

34

35

36 Enacts the "Uniform Mediation Act."

SENATE, No. 679

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Morris and Passaic)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman PATRICK DIEGNAN, JR.

District 18 (Middlesex)

Co-Sponsored by:

Assemblyman McKeon

SYNOPSIS

Enacts the "Uniform Mediation Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/8/2004)

1 AN ACT creating the "Uniform Mediation Act" and supplementing
2 Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This Act shall be known and may be cited as the "Uniform
8 Mediation Act."

9

10 2. Definitions. As used in this act:

11 "Mediation" means a process in which a mediator facilitates
12 communication and negotiation between parties to assist them in
13 reaching a voluntary agreement regarding their dispute.

14 "Mediation communication" means a statement, whether verbal or
15 nonverbal or in a record, that occurs during a mediation or is made for
16 purposes of considering, conducting, participating in, initiating,
17 continuing, or reconvening a mediation or retaining a mediator. A
18 mediation communication shall not be deemed to be a public record
19 under P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
20 supplemented by P.L.2001, c.404 (C.47:1A-5 et seq.).

21 "Mediator" means an individual who conducts a mediation.

22 "Nonparty participant" means a person, other than a party or
23 mediator, who participates in a mediation.

24 "Mediation party" means a person who participates in a mediation
25 and whose agreement is necessary to resolve the dispute.

26 "Person" means an individual; corporation; business trust; estate;
27 trust; partnership; limited liability company; association; joint venture;
28 government; governmental subdivision, agency, or instrumentality;
29 public corporation, or any other legal or commercial entity.

30 "Proceeding" means a judicial, administrative, arbitral, or other
31 adjudicative process, including related pre-hearing and post-hearing
32 motions, conferences, and discovery; or a legislative hearing or similar
33 process.

34 "Record" means information that is inscribed on a tangible medium
35 or that is stored in an electronic or other medium and is retrievable in
36 perceivable form.

37 "Sign" means to execute or adopt a tangible symbol with the
38 present intent to authenticate a record, or to attach or logically
39 associate an electronic symbol, sound, or process to or with a record
40 with the present intent to authenticate a record.

41

42 3. Scope.

43 a. Except as otherwise provided in subsection b. or c., this act shall
44 apply to a mediation in which:

45 (1) the mediation parties are required to mediate by statute, court
46 rule or administrative agency rule, or are referred to mediation by a
47 court, administrative agency, or arbitrator;

1 (2) the mediation parties and the mediator agree to mediate in a
2 record that demonstrates an expectation that mediation
3 communications will be privileged against disclosure; or

4 (3) the mediation parties use as a mediator an individual who holds
5 himself out as a mediator, or the mediation is provided by a person
6 who holds itself out as providing mediation.

7 b. The act shall not apply to a mediation:

8 (1) relating to the establishment, negotiation, administration, or
9 termination of a collective bargaining relationship or to any mediation
10 conducted by the Public Employment Relations Commission or the
11 State Board of Mediation;

12 (2) relating to a dispute that is pending under or is part of the
13 processes established by a collective bargaining agreement, except that
14 the act applies to a mediation arising out of a dispute that has been
15 filed with a court or an administrative agency other than the Public
16 Employment Relations Commission or the State Board of Mediation;

17 (3) conducted by a judge who may make a ruling on the case; or

18 (4) conducted under the auspices of:

19 (a) a primary or secondary school if all the parties are students; or

20 (b) a juvenile detention facility or shelter if all the parties are
21 residents of that facility or shelter.

22 c. If the parties agree in advance in a signed record, or a record of
23 proceeding so reflects, that all or part of a mediation is not privileged,
24 the privileges under sections 4 through 6 of P.L. , c. (C.)
25 (now pending before the Legislature as sections 4 through 6 of this
26 bill) shall not apply to the mediation or part agreed upon. Sections 4
27 through 6 of P.L. , c. (C.) (now pending before the Legislature
28 as sections 4 through 6 of this bill) shall apply to a mediation
29 communication made by a person who has not received actual notice
30 of the agreement before the communication is made.

31
32 4. Privilege against Disclosure; Admissibility; Discovery.

33 a. Except as otherwise provided in section 6 of P.L. , c. (C.)
34 (now pending before the Legislature as section 6 of this bill), a
35 mediation communication is privileged as provided in subsection b. of
36 this section and shall not be subject to discovery or admissible in
37 evidence in a proceeding unless waived or precluded as provided by
38 section 5 of P.L. , c. (C.) (now pending before the Legislature
39 as section 5 of this bill).

40 b. In a proceeding, the following privileges shall apply:

41 (1) a mediation party may refuse to disclose, and may prevent any
42 other person from disclosing, a mediation communication.

43 (2) a mediator may refuse to disclose a mediation communication,
44 and may prevent any other person from disclosing a mediation
45 communication of the mediator.

1 (3) a nonparty participant may refuse to disclose, and may prevent
2 any other person from disclosing, a mediation communication of the
3 nonparty participant.

4 c. Evidence or information that is otherwise admissible or subject
5 to discovery shall not become inadmissible or protected from
6 discovery solely by reason of its disclosure or use in a mediation.

7
8 5. Waiver and Preclusion of Privilege.

9 a. A privilege under section 4 of P.L. , c. (C.) (now pending
10 before the Legislature as section 4 of this bill) may be waived in a
11 record or orally during a proceeding if it is expressly waived by all
12 parties to the mediation and:

13 (1) in the case of the privilege of a mediator, it is expressly waived
14 by the mediator; and

15 (2) in the case of the privilege of a nonparty participant, it is
16 expressly waived by the nonparty participant.

17 b. A person who discloses or makes a representation about a
18 mediation communication that prejudices another person in a
19 proceeding is precluded from asserting a privilege under section 4 of
20 P.L. , c. (C.) (now pending before the Legislature as section 4 of
21 this bill), but only to the extent necessary for the person prejudiced to
22 respond to the representation or disclosure.

23 c. A person who intentionally uses a mediation to plan, attempt to
24 commit or commit a crime, or to conceal an ongoing crime or ongoing
25 criminal activity is precluded from asserting a privilege under section
26 4 of P.L. , c. (C.) (now pending before the Legislature as section
27 4 of this bill).

28
29 6. Exceptions to Privilege.

30 a. There is no privilege under section 4 of P.L. , c. (C.)
31 (now pending before the Legislature as section 4 of this bill) for a
32 mediation communication that is:

33 (1) in an agreement evidenced by a record signed by all parties to
34 the agreement;

35 (2) made during a session of a mediation that is open, or is
36 required by law to be open, to the public;

37 (3) a threat or statement of a plan to inflict bodily injury or commit
38 a crime;

39 (4) intentionally used to plan a crime, attempt to commit a crime,
40 or to conceal an ongoing crime or ongoing criminal activity;

41 (5) sought or offered to prove or disprove a claim or complaint
42 filed against a mediator arising out of a mediation;

43 (6) except as otherwise provided in subsection c., sought or
44 offered to prove or disprove a claim or complaint of professional
45 misconduct or malpractice filed against a mediation party, nonparty
46 participant, or representative of a party based on conduct occurring
47 during a mediation; or

1 (7) sought or offered to prove or disprove child abuse or neglect
2 in a proceeding in which the Division of Youth and Family Services in
3 the Department of Human Services is a party, unless the Division of
4 Youth and Family Services participates in the mediation.

5 b. There is no privilege under section 4 of P.L. , c. (C.)
6 (now pending before the Legislature as section 4 of this bill) if a court,
7 administrative agency, or arbitrator finds, after a hearing in camera,
8 that the party seeking discovery or the proponent of the evidence has
9 shown that the evidence is not otherwise available, that there is a need
10 for the evidence that substantially outweighs the interest in protecting
11 confidentiality, and that the mediation communication is sought or
12 offered in:

13 (1) a court proceeding involving a crime as defined in the "New
14 Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq.; or

15 (2) except as otherwise provided in subsection c., a proceeding to
16 prove a claim to rescind or reform or a defense to avoid liability on a
17 contract arising out of the mediation.

18 c. A mediator may not be compelled to provide evidence of a
19 mediation communication referred to in paragraph (6) of subsection a.
20 or paragraph (2) of subsection b.

21 d. If a mediation communication is not privileged under subsection
22 a. or b., only the portion of the communication necessary for the
23 application of the exception from nondisclosure may be admitted.
24 Admission of evidence under subsection a. or b. does not render the
25 evidence, or any other mediation communication, discoverable or
26 admissible for any other purpose.

27
28 7. Prohibited mediator reports.

29 a. Except as required in subsection b., a mediator may not make a
30 report, assessment, evaluation, recommendation, finding, or other oral
31 or written communication regarding a mediation to a court,
32 administrative agency, or other authority that may make a ruling on
33 the dispute that is the subject of the mediation.

34 b. A mediator may disclose:

35 (1) whether the mediation occurred or has terminated, whether a
36 settlement was reached, and attendance; or

37 (2) a mediation communication as permitted under section 6 of
38 P.L. , c. (C.)(now pending before the Legislature as section 6 of
39 this bill);

40 c. A communication made in violation of subsection a. may not be
41 considered by a court, administrative agency, or arbitrator.

42
43 8. Confidentiality.

44 Unless made during a session of a mediation which is open, or is
45 required by law to be open, to the public, mediation communications
46 are confidential to the extent agreed by the parties or provided by
47 other law or rule of this State.

1 9. Mediator's Disclosure of Conflicts of Interest; Background.

2 a. Before accepting a mediation, an individual who is requested to
3 serve as a mediator shall:

4 (1) make an inquiry that is reasonable under the circumstances to
5 determine whether there are any known facts that a reasonable
6 individual would consider likely to affect the impartiality of the
7 mediator, including a financial or personal interest in the outcome of
8 the mediation and an existing or past relationship with a mediation
9 party or foreseeable participant in the mediation; and

10 (2) disclose any such known fact to the mediation parties as soon
11 as is practicable before accepting a mediation.

12 b. If a mediator learns any fact described in paragraph (1) of
13 subsection a. after accepting a mediation, the mediator shall disclose
14 it as soon as is practicable.

15 c. At the request of a mediation party, an individual who is
16 requested to serve as a mediator shall disclose the mediator's
17 qualifications to mediate a dispute.

18 d. A person who violates subsection a., b., or g. shall be
19 precluded by the violation from asserting a privilege under section 4
20 of P.L. , c. (C.) (now pending before the Legislature as section 4
21 of this bill), but only to the extent necessary to prove the violation.

22 e. Subsections a, b., c., and g. do not apply to a judge of any court
23 of this State acting as a mediator.

24 f. This act does not require that a mediator have a special
25 qualification by background or profession.

26 g. A mediator shall be impartial, notwithstanding disclosure of the
27 facts required in subsections a. and b.

28

29 10. Participation in Mediation.

30 An attorney or other individual designated by a party may
31 accompany the party to and participate in a mediation. A waiver of
32 representation or participation given before the mediation may be
33 rescinded.

34

35 11. Relation to Electronic Signatures in Global and National
36 Commerce Act.

37 This act modifies, limits, or supersedes the federal Electronic
38 Signatures in Global and National Commerce Act, 15 U.S.C. Section
39 7001 et seq., but this act does not modify, limit, or supersede Section
40 101(c) of that act or authorize electronic delivery of any of the notices
41 described in Section 103(b) of that act.

42

43 12. Uniformity of application and construction.

44 In applying and construing this act, consideration shall be given to
45 the need to promote uniformity of the law with respect to its subject
46 matter among states that enact it.

47

1 13. Severability clause.

2 If any provision of P.L. , c. (C.)(now pending before the
3 Legislature as this bill) or its application to any person or circumstance
4 is held invalid, the invalidity does not affect other provisions or
5 applications of this act which can be given effect without the invalid
6 provision or application, and to this end the provisions of this act are
7 severable.

8

9 14. This act shall take effect immediately and shall apply to any
10 agreements to mediate made on or after the effective date of this act.

11

12

13 STATEMENT

14

15 This bill enacts the "Uniform Mediation Act" (UMA) which
16 establishes uniform standards and procedures for mediation and
17 mediators. The National Conference of Commissioners of Uniform
18 State Laws (NCCUSL) proposed the UMA. This uniform act has been
19 approved by the New Jersey Law Revision Commission, the New
20 Jersey Association of Professional Mediators and the New Jersey State
21 Bar Association.

22 By establishing these uniform guidelines for mediation, it is the
23 sponsor's intent to protect all individuals who choose to resolve their
24 disputes through either court ordered mediation or voluntarily
25 undertaken mediation where the parties and mediator expect that
26 mediation communications will be privileged against disclosure.

27 The bill would not apply to collective bargaining, settlement
28 conferences with a judge who may make a ruling on the case and peer
29 mediation in schools when all the parties are students. This bill would
30 explicitly exempt from its coverage mediation conducted by the Public
31 Employment Relations Commission or the State Board of Mediation
32 pursuant to the regulations of these labor relations agencies.

33 This bill would establish a privilege for mediation communications.
34 Under the provisions of the bill, mediators and parties to a mediation
35 may refuse to reveal, and may prevent the mediator or another party
36 from disclosing, mediation communications. The mediator and the
37 parties may expressly waive their privilege, except that the parties may
38 not waive the privilege of the mediator or any other party, and the
39 mediator may not waive the privilege of any party. The privilege is
40 also subject to enumerated exceptions. However, even if a mediator
41 waives the privilege the mediator cannot disclose what parties said in
42 the mediation unless the parties consent or unless the communication
43 falls under one of the specified exceptions to the privilege.

44 There is no privilege for a mediation communication that is in an
45 agreement evidenced by a record that is signed by the parties.
46 Privilege is not available with regard to a mediation session that is, or
47 is required to be, held in public. Nor is there privilege with regard to

1 any mediation communication that is a plan to commit a crime or a
2 threat to commit a crime or a threat to inflict bodily injury. There is
3 no privilege to conceal a mediation communication sought to be used
4 to either prove or disprove child abuse. In a court proceeding
5 involving a crime or a proceeding contesting the enforcement of an
6 agreement that resulted from a mediation the court may set aside the
7 privilege if the evidence is not otherwise available and if the need for
8 the evidence substantially outweighs the interest in protecting
9 confidentiality.

10 This bill prohibits mediators from making a report, assessment,
11 recommendation or oral or written communication to a court that
12 would rule on the matter, unless the mediator and the parties consent.

13 The bill would provide that all mediation communications are
14 confidential to the extent agreed by the parties or provided under the
15 law. The bill would also require mediators to make reasonable inquiry
16 to determine whether there are any known facts that might reasonably
17 be understood to affect their impartiality. The mediator would be
18 required to disclose any known fact to the mediation parties before
19 accepting a mediation, or as soon as practicable if such fact is
20 discovered after accepting a mediation.

21 Any party to mediation may be accompanied by an attorney or any
22 other individual designated by a party.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 679

STATE OF NEW JERSEY

DATED: MAY 10, 2004

The Assembly Judiciary Committee reports favorably Senate Bill No. 679.

This bill enacts the "Uniform Mediation Act" (UMA) which establishes uniform standards and procedures for mediation and mediators. The National Conference of Commissioners of Uniform State Laws (NCCUSL) proposed the UMA. This uniform act has been approved by the New Jersey Law Revision Commission, the New Jersey Association of Professional Mediators and the New Jersey State Bar Association.

The bill would not apply to collective bargaining, settlement conferences with a judge who may make a ruling on the case and peer mediation in schools when all the parties are students or a juvenile detention facility or shelter. This bill would explicitly exempt from its coverage mediation conducted by the Public Employment Relations Commission or the State Board of Mediation pursuant to the regulations of these labor relations agencies. (Section 3 of the bill.)

This bill would establish a privilege for mediation communications in section 4. Under the provisions of the bill, mediators and parties to a mediation may refuse to reveal, and may prevent the mediator or another party from disclosing, mediation communications. The mediator and the parties may expressly waive their privilege, except that the parties may not waive the privilege of the mediator or any other party, and the mediator may not waive the privilege of any party. The privilege is also subject to enumerated exceptions. However, even if a mediator waives the privilege the mediator cannot disclose what parties said in the mediation unless the parties consent or unless the communication falls under one of the specified exceptions to the privilege.

There is no privilege for a mediation communication that is in an agreement evidenced by a record that is signed by the parties. Privilege is not available with regard to a mediation session that is, or is required to be, held in public. Nor is there privilege with regard to any mediation communication that is a plan to commit a crime or a threat to commit a crime or a threat to inflict bodily injury. There is no privilege to conceal a mediation communication sought to be used to either prove or disprove child abuse or professional misconduct or malpractice arising out of the mediation. In a court proceeding

involving a crime or a proceeding contesting the enforcement of an agreement that resulted from a mediation the court may set aside the privilege if the evidence is not otherwise available and if the need for the evidence substantially outweighs the interest in protecting confidentiality. (Section 6 of the bill.)

This bill in section 7 prohibits mediators from making a report, assessment, recommendation or oral or written communication to a court or other authority that would rule on the matter, unless the mediator and the parties consent.

The bill would provide that all mediation communications are confidential to the extent agreed by the parties or provided under the law. (Section 8 of the bill.)

The bill would also require mediators to make reasonable inquiry to determine whether there are any known facts that might reasonably be understood to affect their impartiality. The mediator would be required to disclose any known fact to the mediation parties before accepting a mediation, or as soon as practicable if such fact is discovered after accepting a mediation. (Section 9 of the bill.)

Any party to mediation may be accompanied by an attorney or any other individual designated by a party.

This bill is identical to Assembly Bill No. 841.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 679

STATE OF NEW JERSEY

DATED: JANUARY 26, 2004

The Senate Judiciary Committee reports favorably Senate Bill No. 679.

This bill enacts the "Uniform Mediation Act" (UMA) which establishes uniform standards and procedures for mediation and mediators. The National Conference of Commissioners of Uniform State Laws (NCCUSL) proposed the UMA. This uniform act has been approved by the New Jersey Law Revision Commission, the New Jersey Association of Professional Mediators and the New Jersey State Bar Association.

The bill would not apply to collective bargaining, settlement conferences with a judge who may make a ruling on the case and peer mediation in schools when all the parties are students or a juvenile detention facility or shelter. This bill would explicitly exempt from its coverage mediation conducted by the Public Employment Relations Commission or the State Board of Mediation pursuant to the regulations of these labor relations agencies. (Section 3 of the bill.)

This bill would establish a privilege for mediation communications in section 4. Under the provisions of the bill, mediators and parties to a mediation may refuse to reveal, and may prevent the mediator or another party from disclosing, mediation communications. The mediator and the parties may expressly waive their privilege, except that the parties may not waive the privilege of the mediator or any other party, and the mediator may not waive the privilege of any party. The privilege is also subject to enumerated exceptions. However, even if a mediator waives the privilege the mediator cannot disclose what parties said in the mediation unless the parties consent or unless the communication falls under one of the specified exceptions to the privilege.

There is no privilege for a mediation communication that is in an agreement evidenced by a record that is signed by the parties. Privilege is not available with regard to a mediation session that is, or is required to be, held in public. Nor is there privilege with regard to any mediation communication that is a plan to commit a crime or a threat to commit a crime or a threat to inflict bodily injury. There is no privilege to conceal a mediation communication sought to be used to either prove or disprove child abuse or professional misconduct or malpractice arising out of the mediation. In a court proceeding

involving a crime or a proceeding contesting the enforcement of an agreement that resulted from a mediation the court may set aside the privilege if the evidence is not otherwise available and if the need for the evidence substantially outweighs the interest in protecting confidentiality. (Section 6 of the bill.)

This bill in section 7 prohibits mediators from making a report, assessment, recommendation or oral or written communication to a court or other authority that would rule on the matter, unless the mediator and the parties consent.

The bill would provide that all mediation communications are confidential to the extent agreed by the parties or provided under the law. (Section 8 of the bill.)

The bill would also require mediators to make reasonable inquiry to determine whether there are any known facts that might reasonably be understood to affect their impartiality. The mediator would be required to disclose any known fact to the mediation parties before accepting a mediation, or as soon as practicable if such fact is discovered after accepting a mediation. (Section 9 of the bill.)

Any party to mediation may be accompanied by an attorney or any other individual designated by a party.

This bill is identical to Assembly Bill No. 841.

ASSEMBLY, No. 841

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman PATRICK DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Enacts the "Uniform Mediation Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT creating the "Uniform Mediation Act" and supplementing
2 Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This Act shall be known and may be cited as the "Uniform
8 Mediation Act."

9

10 2. Definitions. As used in this act:

11 "Mediation" means a process in which a mediator facilitates
12 communication and negotiation between parties to assist them in
13 reaching a voluntary agreement regarding their dispute.

14 "Mediation communication" means a statement, whether verbal or
15 nonverbal or in a record, that occurs during a mediation or is made for
16 purposes of considering, conducting, participating in, initiating,
17 continuing, or reconvening a mediation or retaining a mediator. A
18 mediation communication shall not be deemed to be a public record
19 under P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
20 supplemented by P.L.2001, c.404 (C.47:1A-5 et seq.).

21 "Mediator" means an individual who conducts a mediation.

22 "Nonparty participant" means a person, other than a party or
23 mediator, who participates in a mediation.

24 "Mediation party" means a person who participates in a mediation
25 and whose agreement is necessary to resolve the dispute.

26 "Person" means an individual; corporation; business trust; estate;
27 trust; partnership; limited liability company; association; joint venture;
28 government; governmental subdivision, agency, or instrumentality;
29 public corporation, or any other legal or commercial entity.

30 "Proceeding" means a judicial, administrative, arbitral, or other
31 adjudicative process, including related pre-hearing and post-hearing
32 motions, conferences, and discovery; or a legislative hearing or similar
33 process.

34 "Record" means information that is inscribed on a tangible medium
35 or that is stored in an electronic or other medium and is retrievable in
36 perceivable form.

37 "Sign" means to execute or adopt a tangible symbol with the
38 present intent to authenticate a record, or to attach or logically
39 associate an electronic symbol, sound, or process to or with a record
40 with the present intent to authenticate a record.

41

42 3. Scope.

43 a. Except as otherwise provided in subsection b. or c., this act shall
44 apply to a mediation in which:

45 (1) the mediation parties are required to mediate by statute, court
46 rule or administrative agency rule, or are referred to mediation by a

1 court, administrative agency, or arbitrator;

2 (2) the mediation parties and the mediator agree to mediate in a
3 record that demonstrates an expectation that mediation
4 communications will be privileged against disclosure; or

5 (3) the mediation parties use as a mediator an individual who holds
6 himself out as a mediator, or the mediation is provided by a person
7 who holds itself out as providing mediation.

8 b. The act shall not apply to a mediation:

9 (1) relating to the establishment, negotiation, administration, or
10 termination of a collective bargaining relationship or to any mediation
11 conducted by the Public Employment Relations Commission or the
12 State Board of Mediation;

13 (2) relating to a dispute that is pending under or is part of the
14 processes established by a collective bargaining agreement, except that
15 the act applies to a mediation arising out of a dispute that has been
16 filed with a court or an administrative agency other than the Public
17 Employment Relations Commission or the State Board of Mediation;

18 (3) conducted by a judge who may make a ruling on the case; or

19 (4) conducted under the auspices of:

20 (a) a primary or secondary school if all the parties are students; or

21 (b) a juvenile detention facility or shelter if all the parties are
22 residents of that facility or shelter.

23 c. If the parties agree in advance in a signed record, or a record of
24 proceeding so reflects, that all or part of a mediation is not privileged,
25 the privileges under sections 4 through 6 of P.L. , c. (C.)
26 (now pending before the Legislature as sections 4 through 6 of this
27 bill) shall not apply to the mediation or part agreed upon. Sections 4
28 through 6 of P.L. , c. (C.) (now pending before the Legislature
29 as sections 4 through 6 of this bill) shall apply to a mediation
30 communication made by a person who has not received actual notice
31 of the agreement before the communication is made.

32

33 4. Privilege against Disclosure; Admissibility; Discovery.

34 a. Except as otherwise provided in section 6 of P.L. , c. (C.)
35 (now pending before the Legislature as section 6 of this bill), a
36 mediation communication is privileged as provided in subsection b. of
37 this section and shall not be subject to discovery or admissible in
38 evidence in a proceeding unless waived or precluded as provided by
39 section 5 of P.L. , c. (C.) (now pending before the Legislature
40 as section 5 of this bill).

41 b. In a proceeding, the following privileges shall apply:

42 (1) a mediation party may refuse to disclose, and may prevent any
43 other person from disclosing, a mediation communication.

44 (2) a mediator may refuse to disclose a mediation communication,
45 and may prevent any other person from disclosing a mediation
46 communication of the mediator.

1 (3) a nonparty participant may refuse to disclose, and may prevent
2 any other person from disclosing, a mediation communication of the
3 nonparty participant.

4 c. Evidence or information that is otherwise admissible or subject
5 to discovery shall not become inadmissible or protected from
6 discovery solely by reason of its disclosure or use in a mediation.

7
8 5. Waiver and Preclusion of Privilege.

9 a. A privilege under section 4 of P.L. , c. (C.) (now
10 pending before the Legislature as section 4 of this bill) may be waived
11 in a record or orally during a proceeding if it is expressly waived by all
12 parties to the mediation and:

13 (1) in the case of the privilege of a mediator, it is expressly waived
14 by the mediator; and

15 (2) in the case of the privilege of a nonparty participant, it is
16 expressly waived by the nonparty participant.

17 b. A person who discloses or makes a representation about a
18 mediation communication that prejudices another person in a
19 proceeding is precluded from asserting a privilege under section 4 of
20 P.L. , c. (C.) (now pending before the Legislature as section
21 4 of this bill), but only to the extent necessary for the person
22 prejudiced to respond to the representation or disclosure.

23 c. A person who intentionally uses a mediation to plan, attempt to
24 commit or commit a crime, or to conceal an ongoing crime or ongoing
25 criminal activity is precluded from asserting a privilege under section
26 4 of P.L. , c. (C.) (now pending before the Legislature as
27 section 4 of this bill).

28
29 6. Exceptions to Privilege.

30 a. There is no privilege under section 4 of P.L. , c. (C.)
31 (now pending before the Legislature as section 4 of this bill) for a
32 mediation communication that is:

33 (1) in an agreement evidenced by a record signed by all parties to
34 the agreement;

35 (2) made during a session of a mediation that is open, or is
36 required by law to be open, to the public;

37 (3) a threat or statement of a plan to inflict bodily injury or commit
38 a crime;

39 (4) intentionally used to plan a crime, attempt to commit a crime,
40 or to conceal an ongoing crime or ongoing criminal activity;

41 (5) sought or offered to prove or disprove a claim or complaint
42 filed against a mediator arising out of a mediation;

43 (6) except as otherwise provided in subsection c., sought or
44 offered to prove or disprove a claim or complaint of professional
45 misconduct or malpractice filed against a mediation party, nonparty
46 participant, or representative of a party based on conduct occurring

1 during a mediation; or

2 (7) sought or offered to prove or disprove child abuse or neglect
3 in a proceeding in which the Division of Youth and Family Services in
4 the Department of Human Services is a party, unless the Division of
5 Youth and Family Services participates in the mediation.

6 b. There is no privilege under section 4 of P.L. , c. (C.)
7 (now pending before the Legislature as section 4 of this bill) if a court,
8 administrative agency, or arbitrator finds, after a hearing in camera,
9 that the party seeking discovery or the proponent of the evidence has
10 shown that the evidence is not otherwise available, that there is a need
11 for the evidence that substantially outweighs the interest in protecting
12 confidentiality, and that the mediation communication is sought or
13 offered in:

14 (1) a court proceeding involving a crime as defined in the "New
15 Jersey Code of Criminal Justice," N.J.S.2C:1-1 et seq.; or

16 (2) except as otherwise provided in subsection c., a proceeding to
17 prove a claim to rescind or reform or a defense to avoid liability on a
18 contract arising out of the mediation.

19 c. A mediator may not be compelled to provide evidence of a
20 mediation communication referred to in paragraph (6) of subsection a.
21 or paragraph (2) of subsection b.

22 d. If a mediation communication is not privileged under subsection
23 a. or b., only the portion of the communication necessary for the
24 application of the exception from nondisclosure may be admitted.
25 Admission of evidence under subsection a. or b. does not render the
26 evidence, or any other mediation communication, discoverable or
27 admissible for any other purpose.

28

29 7. Prohibited mediator reports.

30 a. Except as required in subsection b., a mediator may not make
31 a report, assessment, evaluation, recommendation, finding, or other
32 oral or written communication regarding a mediation to a court,
33 administrative agency, or other authority that may make a ruling on
34 the dispute that is the subject of the mediation.

35 b. A mediator may disclose:

36 (1) whether the mediation occurred or has terminated, whether a
37 settlement was reached, and attendance; or

38 (2) a mediation communication as permitted under section 6 of
39 P.L. , c. (C.)(now pending before the Legislature as section 6
40 of this bill);

41 c. A communication made in violation of subsection a. may not be
42 considered by a court, administrative agency, or arbitrator.

43

44 8. Confidentiality.

45 Unless made during a session of a mediation which is open, or is
46 required by law to be open, to the public, mediation communications

1 are confidential to the extent agreed by the parties or provided by
2 other law or rule of this State.

3

4 9. Mediator's Disclosure of Conflicts of Interest; Background.

5 a. Before accepting a mediation, an individual who is requested to
6 serve as a mediator shall:

7 (1) 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 (2) disclose any such known fact to the mediation parties as soon
14 as is practicable before accepting a mediation.

15 b. If a mediator learns any fact described in paragraph (1) of
16 subsection a. after accepting a mediation, the mediator shall disclose
17 it as soon as is practicable.

18 c. 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 d. A person who violates subsection a., b., or g. shall be
22 precluded by the violation from asserting a privilege under section 4
23 of P.L. , c. (C.) (now pending before the Legislature as section 4
24 of this bill) , but only to the extent necessary to prove the violation.

25 e. Subsections a, b., c., and g. do not apply to a judge of any court
26 of this State acting as a mediator.

27 f. This act does not require that a mediator have a special
28 qualification by background or profession.

29 g. A mediator shall be impartial, notwithstanding disclosure of the
30 facts required in subsections a. and b.

31

32 10. Participation in Mediation.

33 An attorney or other individual designated by a party may
34 accompany the party to and participate in a mediation. A waiver of
35 representation or participation given before the mediation may be
36 rescinded.

37

38 11. Relation to Electronic Signatures in Global and National
39 Commerce Act.

40 This act modifies, limits, or supersedes the federal Electronic
41 Signatures in Global and National Commerce Act, 15 U.S.C. Section
42 7001 et seq., but this act does not modify, limit, or supersede Section
43 101(c) of that act or authorize electronic delivery of any of the notices
44 described in Section 103(b) of that act.

45

46 12. Uniformity of application and construction.

1 In applying and construing this act, consideration shall be given to
2 the need to promote uniformity of the law with respect to its subject
3 matter among states that enact it.

4
5 13. Severability clause.

6 If any provision of P.L. , c. (C.)(now pending before the
7 Legislature as this bill) or its application to any person or circumstance
8 is held invalid, the invalidity does not affect other provisions or
9 applications of this act which can be given effect without the invalid
10 provision or application, and to this end the provisions of this act are
11 severable.

12
13 14. This act shall take effect immediately and shall apply to any
14 agreements to mediate made on or after the effective date of this act.

15
16
17 STATEMENT

18
19 This bill enacts the "Uniform Mediation Act" (UMA) which
20 establishes uniform standards and procedures for mediation and
21 mediators. The National Conference of Commissioners on Uniform
22 State Laws (NCCUSL) proposed the UMA. This uniform act has been
23 approved by the New Jersey Law Revision Commission, the New
24 Jersey Association of Professional Mediators and the New Jersey State
25 Bar Association.

26 The bill is intended to protect all individuals who choose to resolve
27 their disputes through either court ordered mediation or voluntarily
28 undertaken mediation where the parties and mediator expect that
29 mediation communications will be privileged against disclosure. The
30 bill would not apply to collective bargaining, settlement conferences
31 with a judge who may make a ruling on the case on peer mediation in
32 schools when all the parties are students.

33 This bill would establish a privilege for mediation communications.
34 Under the provisions of the bill, mediators and parties to a mediation
35 may refuse to reveal, and may prevent the mediator or another party
36 from disclosing, mediation communications. The mediator and the
37 parties may expressly waive their privilege, except that the parties may
38 not waive the privilege of the mediator or any other party and the
39 mediator may not waive the privilege of any party. The privilege is
40 also subject to enumerated exceptions. However, even if a mediator
41 waives the privileges the mediator cannot disclose what parties said in
42 the mediation unless the parties consent or unless the communication
43 falls under one of the specified exceptions to the privilege.

44 There is no privilege for a mediation communication that is in an
45 agreement evidenced by a record that is signed by the parties.
46 Privilege is not available with regard to a mediation session that is, or

1 is required to be, held in public. Privilege is also not available with
2 regard to any mediation communication that is used to plan or attempt
3 to commit a crime, a threat to commit a crime or a threat to inflict
4 bodily injury. There is no privilege for a mediation communication
5 sought to be used to either prove or disprove child abuse unless the
6 Division of Youth and Family Services participates in the mediation.
7 In a court proceeding involving a crime or a proceeding contesting the
8 enforcement of an agreement that resulted from a mediation the court
9 may set aside the privilege if the evidence is not otherwise available
10 and if the need for the evidence substantially outweighs the interest in
11 protecting confidentiality.

12 This bill prohibits mediators from making a report, assessment,
13 recommendation or oral or written communication to a court that
14 would rule on the matter, unless the mediator and the parties consent.

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16 confidential to the extent agreed by the parties or provided under the
17 law. The bill would also require mediators to make reasonable inquiry
18 to determine whether there are any known facts that might reasonably
19 be understood to affect their impartiality. The mediator would be
20 required to disclose any known fact to the mediation parties before
21 accepting a mediation, or as soon as practicable if such fact is
22 discovered after accepting a mediation.

23 Any party to mediation may be accompanied by an attorney or any
24 other individual designated by a party.

25 This bill explicitly exempts from the bill's coverage mediation
26 conducted by the Public Employment Relations Commission or the
27 State Board of Mediation.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 841

STATE OF NEW JERSEY

DATED: MAY 10, 2004

The Assembly Judiciary Committee reports favorably Assembly Bill No. 841.

This bill enacts the "Uniform Mediation Act" (UMA) which establishes uniform standards and procedures for mediation and mediators. The National Conference of Commissioners of Uniform State Laws (NCCUSL) proposed the UMA. This uniform act has been approved by the New Jersey Law Revision Commission, the New Jersey Association of Professional Mediators and the New Jersey State Bar Association.

The bill would not apply to collective bargaining, settlement conferences with a judge who may make a ruling on the case and peer mediation in schools when all the parties are students or a juvenile detention facility or shelter. This bill would explicitly exempt from its coverage mediation conducted by the Public Employment Relations Commission or the State Board of Mediation pursuant to the regulations of these labor relations agencies. (Section 3 of the bill.)

This bill would establish a privilege for mediation communications in section 4. Under the provisions of the bill, mediators and parties to a mediation may refuse to reveal, and may prevent the mediator or another party from disclosing, mediation communications. The mediator and the parties may expressly waive their privilege, except that the parties may not waive the privilege of the mediator or any other party, and the mediator may not waive the privilege of any party. The privilege is also subject to enumerated exceptions. However, even if a mediator waives the privilege the mediator cannot disclose what parties said in the mediation unless the parties consent or unless the communication falls under one of the specified exceptions to the privilege.

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involving a crime or a proceeding contesting the enforcement of an agreement that resulted from a mediation the court may set aside the privilege if the evidence is not otherwise available and if the need for the evidence substantially outweighs the interest in protecting confidentiality. (Section 6 of the bill.)

This bill in section 7 prohibits mediators from making a report, assessment, recommendation or oral or written communication to a court or other authority that would rule on the matter, unless the mediator and the parties consent.

The bill would provide that all mediation communications are confidential to the extent agreed by the parties or provided under the law. (Section 8 of the bill.)

The bill would also require mediators to make reasonable inquiry to determine whether there are any known facts that might reasonably be understood to affect their impartiality. The mediator would be required to disclose any known fact to the mediation parties before accepting a mediation, or as soon as practicable if such fact is discovered after accepting a mediation. (Section 9 of the bill.)

Any party to mediation may be accompanied by an attorney or any other individual designated by a party.

This bill was prefiled for introduction in the 2004 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

This bill is identical to Senate Bill No. 679.