



The Legislature of the State of New Mexico

48th Legislature, 1st Session

LAWS 2007

CHAPTER 11

HOUSE BILL 192, as amended

Introduced by

REPRESENTATIVE GAIL CHASEY

REPRESENTATIVES JANE E. POWDRELL-CULBERT,
JOSEPH CERVANTES, W. KEN MARTINEZ,
THOMAS E. SWISSTACK, MIMI STEWART,
THOMAS A. ANDERSON AND AL PARK



FOR THE COURTS, CORRECTIONS AND
JUSTICE COMMITTEE

Chapter 11

AN ACT

1
2 RELATING TO MEDIATION; ENACTING THE MEDIATION PROCEDURES ACT;
3 ESTABLISHING CONFIDENTIALITY FOR MEDIATION COMMUNICATIONS;
4 PROVIDING EXCEPTIONS FOR DISCLOSURE OF MEDIATION
5 COMMUNICATIONS.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 Section 1. SHORT TITLE.--This act may be cited as the
9 "Mediation Procedures Act".

10 Section 2. DEFINITIONS.--As used in the Mediation
11 Procedures Act:

12 A. "mediation" means a process in which a
13 mediator:

14 (1) facilitates communication and
15 negotiation between mediation parties to assist them in
16 reaching an agreement regarding their dispute; or

17 (2) promotes reconciliation, settlement or
18 understanding between and among parties;

19 B. "mediation communication" means a statement,
20 whether oral or in a record or verbal or nonverbal, that
21 occurs during a mediation or is made for purposes of
22 considering, conducting, participating in, initiating,
23 continuing or reconvening a mediation or retaining a mediator;

24 C. "mediation party" means a person who
25 participates in a mediation and whose agreement is necessary

1 to resolve the dispute;

2 D. "mediation program" means a program that
3 provides mediation services and is created or administered by
4 a court or court agency, a government or governmental
5 subdivision, agency or instrumentality of this state or a
6 tribal court, government or agency;

7 E. "mediator" means an individual who:

8 (1) holds the individual's self out as a
9 mediator and who conducts a mediation;

10 (2) the mediation parties agree to use as a
11 mediator and who conducts a mediation;

12 (3) is designated by a mediation program as
13 a mediator and who conducts a mediation; or

14 (4) is an observer who is permitted by the
15 mediation parties to watch and listen to the mediation for
16 educational or other administrative purposes;

17 F. "nonparty participant" means a person, other
18 than a mediation party or mediator, who participates in, is
19 present during the mediation or is a mediation program
20 administrator, including a person consulted by a mediation
21 party to assist the mediation party with evaluating,
22 considering or generating offers of settlement;

23 G. "person" means an individual, corporation,
24 business trust, estate, trust, partnership, limited liability
25 company, association, joint venture, government or

1 governmental subdivision, agency or instrumentality, public
2 corporation or any other legal or commercial entity;

3 H. "proceeding" means:

4 (1) arbitration or a judicial,
5 administrative or other adjudicative process, including
6 related pre-hearing and post-hearing motions, conferences and
7 discovery; or

8 (2) a legislative hearing or similar
9 process;

10 I. "record" means information that is inscribed on
11 a tangible medium or that is stored in an electronic or other
12 medium and is retrievable in perceivable form; and

13 J. "sign" means:

14 (1) to execute or adopt a tangible symbol
15 with the present intent to authenticate a record or to ratify
16 the agreement set forth in the record; or

17 (2) to attach or logically associate an
18 electronic symbol, sound or process to or with a record with
19 the present intent to authenticate a record or to ratify the
20 agreement set forth in the record.

21 Section 3. SCOPE.--

22 A. Except as otherwise provided in Subsection B of
23 this section, the Mediation Procedures Act applies to all
24 mediators, nonparty participants, mediation parties and a
25 mediation in which:

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

5 (2) the mediation parties and the mediator
 6 agree to mediate and the agreement to mediate is evidenced by
 7 a record that is signed by the mediation parties.

8 B. The Mediation Procedures Act does not apply to
 9 a mediation:

10 (1) relating to the establishment,
 11 negotiation, administration or termination of a collective
 12 bargaining relationship;

13 (2) relating to a dispute that is pending
 14 pursuant to or is part of the processes established by a
 15 collective bargaining agreement, except that the Mediation
 16 Procedures Act applies to a mediation arising out of a dispute
 17 that has been filed with an administrative agency or court;

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

20 (4) agreed to in writing by the mediation
 21 parties and the mediator prior to the mediation not to be
 22 covered by the Mediation Procedures Act, declared in writing
 23 by a mediation program prior to the mediation or declared in
 24 writing by a court or court agency, a government or
 25 governmental subdivision, agency or instrumentality of this

1 state or a tribal court, government or agency prior to the
2 mediation not to be covered by the Mediation Procedures Act.

3 Section 4. CONFIDENTIALITY.--Except as otherwise
4 provided in the Mediation Procedures Act or by applicable
5 judicial court rules, all mediation communications are
6 confidential, and not subject to disclosure and shall not be
7 used as evidence in any proceeding.

8 Section 5. EXCEPTIONS--ADMISSIBILITY--DISCOVERY.--

9 A. Mediation communications are not confidential
10 pursuant to the Mediation Procedures Act if they:

11 (1) are contained in an agreement reached by
12 the mediation parties during a mediation, including an
13 agreement to mediate, and the agreement is evidenced by a
14 record signed by the mediation parties, except when parts of
15 the agreement are designated by the mediation parties to be
16 confidential or are confidential as otherwise provided by law;

17 (2) are communications that all mediation
18 parties agree may be disclosed, as evidenced by a record
19 signed by all mediation parties prior to or at the mediation;

20 (3) threaten or lead to actual violence in
21 the mediation;

22 (4) reveal the intent of a mediation party
23 to commit a felony or inflict bodily harm to the mediation
24 party's self or another person;

25 (5) disprove a felony charge;

1 (6) are required by law to be made public or
2 otherwise disclosed;

3 (7) relate to abuse, neglect or criminal
4 activity that is not the subject of the mediation;

5 (8) are sought or offered to disprove a
6 claim or complaint of professional misconduct or malpractice
7 based on conduct during a mediation and filed against a
8 mediation party or nonparty participant;

9 (9) relate to the administrative facts of
10 the mediation, including:

11 (a) whether the mediation parties were
12 referred to mediation;

13 (b) whether a mediation occurred or has
14 terminated;

15 (c) the date, time and place of a
16 mediation;

17 (d) the persons in attendance at a
18 mediation; and

19 (e) whether a mediator received payment
20 for the mediation; or

21 (10) relate to whether the parties reached a
22 binding and enforceable settlement in the mediation.

23 B. Mediation communications may be disclosed if a
24 court, after hearing in camera and for good cause shown,
25 orders disclosure of evidence that is sought to be offered and

1 is not otherwise available in an action on an agreement
2 arising out of a mediation evidenced by a record. Nothing in
3 this subsection shall require disclosure by a mediator of any
4 matter related to mediation communications.

5 C. Mediators shall not be required to make
6 disclosure, either through discovery or testimony at trial or
7 otherwise, of any matter related to mediation communications,
8 except:

9 (1) pursuant to Paragraphs (3) through (10)
10 of Subsection A and Paragraph (3) of Subsection D of this
11 section; and

12 (2) to prove or disprove a claim of mediator
13 misconduct or malpractice filed against a mediator.

14 D. Nothing in the Mediation Procedures Act shall
15 prevent:

16 (1) the discovery or admissibility of any
17 evidence that is otherwise discoverable or admissible, merely
18 because the evidence was presented during a mediation;

19 (2) the gathering of information for
20 research or educational purposes or for the purpose of
21 evaluating or monitoring the performance of a mediator;
22 provided that the mediation parties or the specific
23 circumstances of the dispute of the mediation parties are not
24 identified or identifiable;

25 (3) a court or court agency, a government or

1 governmental subdivision, agency or instrumentality of this
 2 state or a tribal court, government or agency, when conducting
 3 a mediation program under its auspices, from ordering prior to
 4 the mediation that different or additional rules of
 5 confidentiality shall apply to the mediation; or

6 (4) mediation parties from agreeing in
 7 writing to additional or different confidentiality protections
 8 prior to the mediation, subject to Paragraphs (3) through (10)
 9 of Subsection A and Subsection C of this section.

10 Section 6. EFFECT OF AGREEMENT.--

11 A. If the mediation parties reach a settlement
 12 agreement evidenced by a record signed by the mediation
 13 parties, the agreement is enforceable in the same manner as
 14 any other written contract. The agreement shall not affect
 15 any outstanding court order unless the terms of the agreement
 16 are incorporated into a subsequent order.

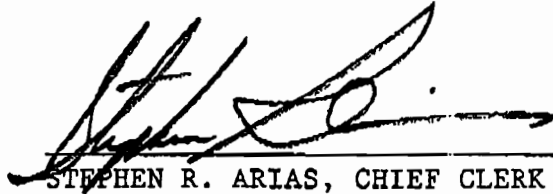
17 B. A court, administrative agency or arbitrator,
 18 in its discretion, may incorporate the terms of the agreement
 19 in the order or other document disposing of the matter.

20 Section 7. EFFECTIVE DATE.--The effective date of the
 21 provisions of this act is July 1, 2007.

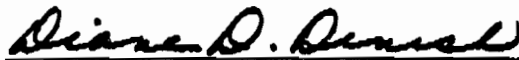
22
 23
 24
 25



BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



MARGARET LARRAGOITE, CHIEF CLERK
SENATE

Approved by me this 13 day of March, 2007



BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO