OLR Bill Analysis

sHB 6971

AN ACT ADOPTING THE CONNECTICUT UNIFORM MEDIATION ACT.

SUMMARY

This bill adopts the Connecticut Uniform Mediation Act. The bill sets mediation-related rules, principally on the confidentiality of mediation communications. It generally applies to both voluntary mediations and those required by law or a court. But it does not apply in certain contexts, such as mediations (1) done by a judge or judicial branch employee or (2) involving various collective bargaining-related issues.

Among other things, the bill:

1. generally makes mediation communications privileged and not subject to discovery or admissible in a proceeding (such as a court or legislative hearing);

2. sets out certain exceptions to this privilege, such as if all mediation parties agree in a record that communications will not be privileged or the communication was a threat to physically hurt someone;

3. limits the information that mediators can disclose to courts or similar authorities when the privilege applies;

4. requires someone, before agreeing to mediate a dispute, to make a reasonable inquiry about potential conflicts of interests and disclose these matters to the parties; and

5. specifically allows a mediation party to bring an attorney or other person to join them and participate in the mediation.

Under the bill, a "mediation" is a process in which a mediator facilities communication and negotiation between parties to help them

reach a voluntary agreement about their dispute. A "mediation party" is a person who participates in a mediation and whose agreement is needed to resolve the dispute.

Existing law generally makes communications privileged in mediations that are not ordered by a court (see BACKGROUND). The bill does not repeal this law, and the bill does not apply to mediations under this law that began before October 1, 2025.

EFFECTIVE DATE: October 1, 2025

CONNECTICUT UNIFORM MEDIATION ACT

Scope (§§ 3 & 12)

General Applicability. Excepted as provided below, the bill applies to mediations when:

1. a statute or court or administrative agency rule require the parties to mediate,

2. a court or an administrative agency or arbitrator refer the parties to mediation,

3. the parties and mediator agree to mediate in a record showing an expectation that mediation communications will be privileged against disclosure, or

4. the mediation is done by an individual holding himself or herself out as a mediator or an entity holding itself out as providing mediation.

Exceptions. But the bill does not apply to mediations that:

1. relate to creating, negotiating, administering, or ending a collective bargaining relationship;

2. relate to pending disputes under a collective bargaining agreement or that are part of a process created by the agreement (unless the mediation arose from a dispute filed with an administrative agency or a court);

3. are conducted by a Superior Court judge or by any judicial branch employee who performs mediations as part of his or her employment;

4. arise from proceedings (see below) governed by the laws on the organization of state agencies (chapter 48 of the general statutes), state employee collective bargaining (chapter 68), municipal employees (chapter 113), or teachers and superintendents (chapter 166);

5. began before October 1, 2025, and are subject to an existing law on privileged communications in certain mediations (CGS § 52-235d, see BACKGROUND);

6. began before October 1, 2025, and are administered under an existing law on judicial branch mediations in divorces and related privileged communications (CGS § 46b-53a);

7. are done through a primary or secondary school, if all the parties are students; or

8. are done through a youth correctional institution, if all the parties are institution residents.

In addition, the bill specifies that despite its other provisions, a voluntary agreement to mediate in a contested probate court matter is governed by the procedures and administrative requirements in probate court rules.

Under the bill, a "proceeding" is a (1) judicial, administrative, arbitral, or other adjudicative process, including related pre- and post-hearing motions, conferences, and discovery or (2) legislative hearing or similar process.

Alternative of Non-Privileged Mediation. The bill allows the parties to agree in advance that the mediation, or a part of it, will not be a privileged mediation (in which case, §§ 4-6 of the bill would not apply). The parties can agree to this (in a signed record) before the mediation begins, or the proceeding's records can reflect this agreement. But the

privilege continues to apply to a person's communications that were made before he or she had actual notice of the agreement.

Privilege Against Disclosure, Admissibility, or Discovery (§ 4)

Under the bill, a mediation communication is privileged and not subject to discovery or admissible in evidence in a proceeding unless it is waived, precluded (see § 5 below), or an exception applies (see § 6 below). A "mediation communication" is a statement made during a mediation or made to consider, conduct, participate in, initiate, continue, or reconvene a mediation, or to retain a mediator. The statement can be oral or in a record, and can be verbal or nonverbal.

Specifically, the following privileges apply in a proceeding:

1. a mediation party may refuse to disclose a mediation communication and may prevent anyone else from disclosing it;

2. a mediator may refuse to disclose a mediation communication, and may prevent anyone else from disclosing one of the mediator's communications; and

3. a nonparty participant may refuse to disclose one of his or her communications, and may prevent anyone else from disclosing it.

Under the bill, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because it was disclosed or used in a mediation.

Waiver and Preclusion of Privilege (§ 5)

Under the bill, all parties to the mediation may waive the privilege by expressly doing so in a record or orally during a proceeding. If it is the mediator's or a nonparty participant's privilege, that person must also expressly waive the privilege for the waiver to apply.

Someone that discloses or makes a representation about a mediation communication that prejudices another person in a proceeding cannot assert the bill's privilege, but they are blocked from asserting it only to

the extent needed to allow the other person to respond to the disclosure or representation.

The bill also prevents someone from asserting a privilege under it if the person intentionally uses a mediation to (1) plan, attempt, or commit a crime or (2) conceal an ongoing crime or criminal activity.

Exceptions to Privilege (§ 6)

The bill's privilege does not apply to a mediation communication that is:

1. in an agreement signed by all parties in a record;

2. publicly available under the Freedom of Information Act (FOIA), or made during a mediation session which is open to the public or required by law to be open;

3. a threat or stated plan to inflict bodily injury or commit a violent crime; or

4. intentionally used to plan, attempt, or commit a crime or to hide an ongoing crime or criminal activity.

The privilege also does not apply to a mediation communication that is sought or offered to prove or disprove the following:

1. a claim or complaint against the mediator for professional misconduct or malpractice;

2. a claim or complaint of professional misconduct or malpractice against a mediation party, nonparty participant, or party representative based on conduct during a mediation (but a mediator cannot be forced to provide evidence about the communication); or

3. abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless a court referred the proceeding to mediation and the agency participates in the mediation.

There is also no privilege if a court, administrative agency, or arbitrator, after an in camera hearing (in chambers and not in public), finds that the party seeking discovery or the proponent of the evidence has shown that the (1) evidence is not otherwise available, (2) need for it substantially outweighs the interest in protecting confidentiality, and (3) mediation communication is sought or offered in certain types of proceedings. Specifically, this applies to a court proceeding involving a felony or misdemeanor. It also applies to a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising from the mediation (e.g., a settlement agreement), but a mediator cannot be forced to provide evidence about the communication.

If a mediation communication is not privileged under these provisions, only the part necessary for the exception to apply may be admitted. Also, the admission of evidence under these provisions does not make the evidence (or any other mediation communication) discoverable or admissible for any other purpose.

Prohibited Mediator Reports (§ 7)

The bill prohibits communications by mediators in certain circumstances. Generally, it prohibits a mediator from making a report, assessment, evaluation, recommendation, finding, or other communication about a mediation to a court, administrative agency, or other authority that may rule on the underlying dispute. It correspondingly bars courts, administrative agencies, or arbitrators from considering these prohibited communications.

But it allows mediators to disclose the following:

1. whether the mediation occurred or has ended, whether a settlement was reached, and attendance at the mediation;

2. a mediation communication allowed under the bill's exceptions from privilege (see § 6); or

3. a mediation communication showing that someone was abused, neglected, abandoned, or exploited, if the disclosure is to a public agency responsible for protecting people against this

mistreatment.

Confidentiality (§ 8)

Under the bill, unless mediation communications are subject to FOIA, they are confidential to the extent agreed to by the parties or provided by other state laws or rules.

Mediator's Disclosure of Conflicts of Interest and Background (§ 9)

Conflicts Check and Disclosure. Under the bill, before accepting a mediation, an individual asked to serve as a mediator must make a reasonable inquiry to determine whether there are any known facts that a reasonable individual would consider likely to affect a mediator's impartiality. This includes (1) a financial or personal interest in the outcome and (2) an existing or past relationship with a party or foreseeable participant in the mediation.

If the individual determines that there are any such facts, he or she must disclose them to the parties as soon as is practical before accepting a mediation. After accepting the role, if a mediator learns of any such facts, he or she must disclose them as soon as is practicable.

The bill also requires a mediator to be impartial, unless the parties agree otherwise after the mediator has told them about these known facts likely affecting his or her impartiality.

The bill prohibits anyone who violates these provisions from asserting a privilege under it (see § 4).

These provisions on conflict checks and impartiality do not apply to judges acting as mediators (as judges remain bound by standards of impartiality in the Code of Judicial Conduct).

The bill also specifies that a mediation is deemed to have begun when the referral or agreement to mediate is made.

Mediator's Qualifications. The bill does not require a mediator to have special qualifications by background or profession. But if a party requests it, a prospective mediator (except a judge) must disclose his or

her qualifications to mediate a dispute.

Participation in Mediation (§ 10)

The bill allows an attorney, or someone else a party designates, to accompany the party to the mediation and participate in it. But non-attorney participants accompanying a party are not allowed to practice law without a license, and they must not attempt to provide legal advice to participants.

The bill also specifies that parties have the right to rescind a pre-mediation participation waiver (in other words, a waiver of the right to be accompanied by a lawyer or someone else).

International Commercial Mediation (§ 11)

Generally, under the bill, international commercial mediations are governed by the United Nations Commission on International Trade Law's 2002 Model Law on International Commercial Conciliation. But the parties can instead agree that the bill applies.

Also, the bill generally makes its provisions on the communication privilege, waiver, exceptions, and related matters (§§ 4-6), and applicable definitions (§ 2), apply to an international commercial mediation, and nothing in article 10 of the model law (on admissibility of evidence in other proceedings) takes away from that. But the parties can agree otherwise as to all or part of the mediation (see *Alternative of Non-Privileged Mediation* above).

Relationship to E-SIGN Act (§ 13)

The bill's provisions generally modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, which regulates the use of electronic records and signatures in interstate and foreign commerce. But the bill does not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures or (2) authorize electronic delivery of specified notices not subject to E-SIGN (e.g., court orders or notices).

Uniform Construction; Severability (§§ 14 & 15)

The bill directs that, in applying and construing this uniform act, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Additionally, the bill's provisions are severable (that is, if a provision or its application is held invalid, other provisions or applications are not affected).

Application to Existing Agreements or Referrals (§ 16)

The bill governs mediations under referrals or agreements to mediate made on or after October 1, 2025 (the bill's effective date). Starting October 1, 2026, it governs agreements to mediate whenever made.

BACKGROUND

Existing Law on Privileged Communications in Certain Mediations

Existing law generally prevents the voluntary disclosure, or disclosure through discovery or compulsory process, of oral or written communications received or obtained by any participant during a mediation that was not ordered by a court. Disclosure is allowed when the parties agree to it, it furthers settlement discussions, or certain conditions are met.

Disclosures in violation of these provisions are not admissible in any proceeding, but communications that are otherwise discoverable are not protected merely because they were presented during a mediation (CGS § 52-235d).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 39 Nay 0 (04/10/2025)