



**PA 25-35**—sHB 6971

*Judiciary Committee*

**AN ACT ADOPTING THE CONNECTICUT UNIFORM MEDIATION ACT**

**SUMMARY:** This act adopts the Connecticut Uniform Mediation Act. The act sets mediation-related rules, principally on communications confidentiality. 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 by a judge or judicial branch employee or involving various collective bargaining-related issues.

Among other things, the act:

1. generally makes mediation communications privileged and not subject to discovery or admissible in a proceeding (such as a court or legislative hearing);
2. allows the parties to waive the privilege;
3. sets out certain exceptions to the privilege, such as if the communication was a threat to physically hurt someone;
4. limits the information that mediators can disclose to courts or similar authorities when the privilege applies;
5. 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
6. specifically allows a mediation party to bring an attorney or other person to join them and participate in the mediation.

Under the act, a “mediation” is a process in which a mediator facilitates 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 act does not repeal this law, and the act 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.* Except as provided below, the act applies to mediations when:

1. a statute or court or administrative agency rule requires the parties to mediate,
2. a court or an administrative agency or arbitrator refers the parties to

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- 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 act 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 it arose from a dispute filed with an administrative agency or a court);
3. a Superior Court judge or any judicial branch employee conducts if the employee performs mediations as part of his or her employment;
4. arise from proceedings 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 (a) subject to the law on privileged communications in certain mediations (CGS § 52-235d, see BACKGROUND) or (b) administered under the law on judicial branch mediations in divorces and related privileged communications (CGS § 46b-53a); or
6. are done through a primary or secondary school or a youth correctional institution, if all the parties are students or institution residents, as applicable.

In addition, the act 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 act, 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 act allows the parties to agree that the mediation, or a part of it, will not be a privileged mediation (in which case, §§ 4-6 below do not apply). The parties can agree to this (in a signed record) before the mediation begins, or the proceeding’s records can reflect the agreement. But the privilege continues to apply to a person’s communications made before he or she had actual notice of the agreement.

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

Under the act, a mediation communication is privileged and not subject to discovery or admissible in evidence in a proceeding unless it is waived or 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. It can be oral or in a record, and can be verbal or nonverbal.

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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 act, 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 act, 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 who discloses or makes a representation about a mediation communication that prejudices another person in a proceeding cannot assert the act's privilege, but only to the extent needed to allow the other person to respond to the disclosure or representation.

The act 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) hide an ongoing crime or criminal activity.

### *Exceptions to Privilege (§ 6)*

The act'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 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.

It also does not apply to a mediation communication sought or offered to prove or disprove the following:

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

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There is also no privilege if a court, administrative agency, or arbitrator, after an in camera hearing (in chambers and not public), finds that the party seeking discovery or the proponent of the evidence showed that the (1) evidence is not otherwise available, (2) need for it substantially outweighs the interest in protecting confidentiality, and (3) 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.

Under the act, if a mediation communication is not privileged under these provisions, only the part necessary for the exception to apply may be admitted. Also, admitting 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 act 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.

However, the act allows mediators to disclose the following:

1. whether the mediation occurred or has ended, whether it reached a settlement, and attendance at the mediation;
2. a communication allowed under the act's privilege exceptions (see § 6); or
3. a 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 act, unless mediation communications are subject to FOIA, they are confidential to the extent the parties agree or other state laws or rules provide.

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

*Conflicts Check and Disclosure.* Under the act, 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 the 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

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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 also disclose them as soon as practicable.

The act requires a mediator to be impartial, unless the parties agree otherwise after the mediator tells them about the known facts likely affecting impartiality.

The act prohibits anyone who violates these provisions from asserting a privilege under it (see § 4), but these provisions on conflict checks and impartiality do not apply to judges acting as mediators (they remain bound by standards of impartiality in the Code of Judicial Conduct).

Under the act, a mediation is deemed to have begun when the referral or agreement to mediate is made.

*Mediator's Qualifications.* The act does not require a mediator to have special qualifications by background or profession. But if a party asks, a prospective mediator (except a judge) must disclose his or her qualifications to mediate a dispute.

### *Participation in Mediation (§ 10)*

The act allows an attorney, or someone else a party designates, to accompany the party to the mediation and participate in it. But it does not permit non-attorney participants accompanying a party to practice law without a license, and they must not try to give legal advice to participants.

The act also specifies that parties may 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 act, the United Nations Commission on International Trade Law's 2002 Model Law on International Commercial Conciliation governs international commercial mediations. But the parties can instead agree that the act applies.

Also, the act 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 the model law's article 10 (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 act'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 act 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

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E-SIGN (e.g., court orders or notices).

### *Uniform Construction and Severability (§§ 14 & 15)*

The act 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 act's provisions are severable (that is, if a court invalidates a provision or its application, the other provisions or applications are unaffected).

### *Application to Referrals or Existing Agreements (§ 16)*

The act governs mediations under referrals or agreements to mediate made on or after October 1, 2025 (the act'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 inadmissible in any proceeding, but communications that are otherwise discoverable are not protected merely because they were presented during a mediation (CGS § 52-235d).