

## **CHAPTER 2710 UNIFORM MEDIATION ACT**

### Section

2710.01. Definitions.

2710.02. Application of chapter to mediation; exceptions.

2710.03. Privilege against disclosure.

2710.04. Waiver and preclusion of privilege.

2710.05. Exceptions to privilege.

2710.06. Prohibited mediator reports.

2710.07. Confidentiality of mediation communications.

2710.08. Disclosure of conflicts of interest.

2710.09. Participation in mediation; withdrawal of mediator.

2710.10. Relation to electronic signature act.

### **§ 2710.01. Definitions.**

As used in sections 2710.01 to 2710.10 of the Revised Code:

(A) "Mediation" means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(B) "Mediation communication" means a statement, whether oral, in a record, verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(C) "Mediator" means an individual who conducts a mediation.

(D) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(E) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(F) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency or instrumentality of the state or of any political subdivision of the state, public corporation, or any other legal or commercial entity.

(G) "Proceeding" means either of the following:

(1) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;

(2) A legislative hearing or similar process.

(H) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or

other medium and is retrievable in perceivable form.

(I) "Sign" means either of the following:

- (1) To execute or adopt a tangible symbol with the present intent to authenticate a record;
- (2) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

The provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) read as follows:

SECTION 3. Sections 2710.01 to 2710.10 of the Revised Code shall be known as the "Uniform Mediation Act."

SECTION 4. Sections 2710.01 to 2710.10 of the Revised Code shall govern a mediation pursuant to a referral or an agreement to mediate made on or after the date that is six months after the effective date of this act.

SECTION 6. In applying and construing sections 2710.01 to 2710.10 of the Revised Code, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among other states that have enacted substantially similar laws.

### **§ 2710.02. Application of chapter to mediation; exceptions.**

(A) Except as otherwise provided in division (B) or (C) of this section, sections 2710.01 to 2710.10 of the Revised Code apply to a mediation under any of the following circumstances:

- (1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator.
- (2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure.
- (3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.

(B) Sections 2710.01 to 2710.10 of the Revised Code do not apply to a mediation in which any of the following apply:

- (1) The mediation relates to the establishment, negotiation, administration, or termination of a collective bargaining relationship.
- (2) The mediation relates to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that sections 2710.01 to 2710.10 of the Revised Code apply to a mediation arising out of a dispute that has been filed with an administrative agency or court.
- (3) The mediation is conducted by a judge or magistrate who might make a ruling on the case.

(4) The mediation is conducted under the auspices of either of the following:

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

(b) A correctional institution for youths if all the parties are residents of that institution.

(C) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 2710.03, 2710.04, and 2710.05 of the Revised Code do not apply to the mediation or part agreed upon. However, sections 2710.03, 2710.04, and 2710.05 of the Revised Code do apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.03. Privilege against disclosure.**

(A) Except as otherwise provided in section 2710.05 of the Revised Code, a mediation communication is privileged as provided in division (B) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in section 2710.04 of the Revised Code.

(B) In a proceeding, the following privileges apply:

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

(2) A mediator may refuse to disclose a mediation communication. A mediator may prevent any other person from disclosing a mediation communication of the mediator.

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

(C) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.04. Waiver and preclusion of privilege.**

(A) A privilege under section 2710.03 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and by whichever of the following is applicable:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator.

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

(B) A person that discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 2710.03 of the Revised Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(C) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 2710.03 of the Revised Code.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.05. Exceptions to privilege.**

(A) There is no privilege under section 2710.03 of the Revised Code for a mediation communication to which any of the following applies:

(1) The mediation communication is contained in a written agreement evidenced by a record signed by all parties to the agreement.

(2) The mediation communication is available to the public under section 149.43 of the Revised Code or made during a session of a mediation that is open, or is required by law to be open, to the public;

(3) The mediation communication is an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence.

(4) The mediation communication is intentionally used to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity.

(5) The mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

(6) Except as otherwise provided in division (C) of this section, the mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a

mediation.

(7) Except as provided in sections 2317.02 and 3109.052 [3109.05.2] of the Revised Code, the mediation communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(8) The mediation communication is required to be disclosed pursuant to section 2921.22 of the Revised Code.

(9) The mediation communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(B) There is no privilege under section 2710.03 of the Revised Code if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that the disclosure is necessary in the particular case to prevent a manifest injustice, and that the mediation communication is sought or offered in either of the following:

(1) A court proceeding involving a misdemeanor;

(2) Except as otherwise provided in division (C) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(C) A mediator may not be compelled to provide evidence of a mediation communication referred to in division (A)(6) or (B)(2) of this section.

(D) If a mediation communication is not privileged under division (A) or (B) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under division (A) or (B) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.06. Prohibited mediator reports.**

(A) Except as provided in division (B) of this section and section 3109.052 [3109.05.2] of the Revised Code, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject of the mediation.

(B) A mediator may disclose any of the following:

- (1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
- (2) A mediation communication as permitted by section 2710.07 of the Revised Code;
- (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment, or exploitation.

(C) A communication made in violation of division (A) of this section shall not be considered by a court, administrative agency, or arbitrator.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.07. Confidentiality of mediation communications.**

Except as provided in sections 121.22 and 149.43 of the Revised Code, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.08. Disclosure of conflicts of interest.**

(A) Before accepting a mediation, an individual who is requested to serve as a mediator shall do both of the following:

- (1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation;
- (2) Disclose any known fact described in division (A)(1) of this section to the mediation parties as soon as is practical before accepting a mediation.

(B) If a mediator learns any fact described in division (A)(1) of this section after accepting a mediation,

the mediator shall disclose it to the mediation parties as soon as is practicable.

(C) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(D) A person that violates division (A), (B), (C), or (G) of this section is precluded from asserting a privilege under section 2710.03 of the Revised Code.

(E) Divisions (A), (B), (C), and (G) of this section do not apply when the mediation is conducted by a judge who might make a ruling on the case.

(F) Sections 2710.01 to 2710.10 of the Revised Code do not require that a mediator have a special qualification by background or profession.

(G) A mediator shall be impartial, unless after disclosure of the facts required to be disclosed by divisions (A) and (B) of this section the parties agree otherwise.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.09. Participation in mediation; withdrawal of mediator.**

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded. A mediator may withdraw as mediator at any time.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

### **§ 2710.10. Relation to electronic signature act.**

Sections 2710.01 to 2710.10 of the Revised Code may modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but sections 2710.01 to 2710.10 of the Revised Code shall not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

**HISTORY: 150 v H 303, § 1, eff. 10-29-05.**

The effective date is set by section 5 of H.B. 303 (150 v - ).

See provisions of §§ 3, 4, and 6 of H.B. 303 (150 v - ) following RC § 2710.01.

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