House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 193

HOUSE BILL 2429

AN ACT

AMENDING SECTION 12-2238, ARIZONA REVISED STATUTES; RELATING TO PRIVILEGED COMMUNICATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-2238, Arizona Revised Statutes, is amended to read:

12-2238. Mediation; privileged communications; exceptions; liability; definitions

A. Before or after the filing of a complaint, mediation may occur pursuant to law, a court order or a voluntary decision of the parties.

B. The mediation process is confidential. Communications made, materials created for or used and acts occurring during a mediation are confidential and may not be discovered or admitted into evidence unless ONE OF THE FOLLOWING EXCEPTIONS IS MET:

1. All of the parties to the mediation agree to the disclosure.

2. The communication, material or act is relevant to a claim or defense made by a party to the mediation against the mediator or the mediation program arising out of a breach of a legal obligation owed by the mediator to the party.

3. The disclosure is required by statute.

4. The disclosure is necessary to enforce an agreement to mediate.

C. Except pursuant to subsection B, paragraph 2, 3 or 4, a mediator is not subject to service of process or a subpoena to produce evidence or to testify regarding any evidence or occurrence relating to the mediation proceedings. Evidence that exists independently of the mediation even if the evidence is used in connection with the mediation is subject to service of process or subpoena.

D. NOTWITHSTANDING SUBSECTION B, WHEN NECESSARY TO ENFORCE OR OBTAIN APPROVAL OF AN AGREEMENT THAT IS REACHED BY THE PARTIES IN A MEDIATION, THE TERMS OF AN AGREEMENT THAT IS EVIDENCED BY A RECORD THAT IS SIGNED BY THE PARTIES ARE NOT CONFIDENTIAL. THE AGREEMENT MAY BE INTRODUCED IN ANY PROCEEDING TO OBTAIN COURT APPROVAL OF THE AGREEMENT, WHERE REQUIRED BY LAW, OR TO ENFORCE THE AGREEMENT. IF A PARTY REQUESTS THAT ALL OR A PORTION OF THE AGREEMENT REMAIN CONFIDENTIAL, THE AGREEMENT MAY BE DISCLOSED TO THE COURT UNDER SEAL WITH A REQUEST TO ISSUE APPROPRIATE ORDERS TO PROTECT THE CONFIDENTIALITY OF THE AGREEMENT, AS PERMITTED BY LAW.

~~D.~~ E. Notwithstanding subsection B, threatened or actual violence that occurs during a mediation is not a privileged communication. The mediator may inform the parties that threatened or actual violence is not privileged and may be disclosed.

~~E.~~ F. A mediator is not subject to civil liability except for those acts or omissions that involve intentional misconduct or reckless disregard of a substantial risk of a significant injury to the rights of others.

~~F.~~ G. For the purposes of this section: ~~,~~

1. "Mediation" means a process in which parties who are involved in a dispute enter into one or more private settlement discussions outside of a formal court proceeding with a neutral third party to try to resolve the dispute.

2. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND THAT IS RETRIEVABLE IN A PERCEIVABLE FORM.

3. "SIGN" MEANS TO EXECUTE OR ADOPT A TANGIBLE SYMBOL WITH THE PRESENT INTENT TO AUTHENTICATE A RECORD OR TO ATTACH OR LOGICALLY ASSOCIATE AN ELECTRONIC SYMBOL, SOUND OR PROCESS TO OR WITH A RECORD WITH THE PRESENT INTENT TO AUTHENTICATE A RECORD.

APPROVED BY THE GOVERNOR APRIL 28, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.