

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)

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

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

4 12-2238. Mediation; privileged communications; exceptions;
5 liability; definitions

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

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

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

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

17 3. The disclosure is required by statute.

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

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

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

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

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

41 ~~F.~~ G. For the purposes of this section: ~~—~~

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

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

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

APPROVED BY THE GOVERNOR APRIL 28, 2010.

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

Passed the House March 11, 2010

Passed the Senate April 21, 2010

by the following vote: 58 Ayes,

by the following vote: 27 Ayes,

0 Nays, 1 Not Voting

2 Nays, 1 Not Voting

[Signature]
Speaker of the House
Pro Tempore

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

22 day of April, 20 10

at 10:00 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 28th day of

April

at 1:13 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 28th day of April, 20 10

at 4:29 o'clock P. M.

[Signature]
Secretary of State

H.B. 2429