

House Engrossed Senate Bill

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

CHAPTER 338

# **SENATE BILL 1293**

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 5. THE DISCLOSURE IS MADE IN A REPORT TO A LAW ENFORCEMENT OFFICER,  
20 THE DEPARTMENT OF CHILD SAFETY OR ADULT PROTECTIVE SERVICES BY A COURT  
21 APPOINTED MEDIATOR WHO REASONABLY BELIEVES THAT A MINOR OR VULNERABLE ADULT  
22 IS OR HAS BEEN A VICTIM OF ABUSE, CHILD ABUSE, NEGLECT, EXPLOITATION,  
23 PHYSICAL INJURY OR A REPORTABLE OFFENSE.

24 C. Except pursuant to subsection B, paragraph 2, 3, ~~or~~ 4 OR 5 OF THIS  
25 SECTION, a mediator is not subject to service of process or a subpoena to  
26 produce evidence or to testify regarding any evidence or occurrence relating  
27 to the mediation proceedings. Evidence that exists independently of the  
28 mediation even if the evidence is used in connection with the mediation is  
29 subject to service of process or subpoena.

30 D. Notwithstanding subsection B OF THIS SECTION, when necessary to  
31 enforce or obtain approval of an agreement that is reached by the parties in  
32 a mediation, the terms of an agreement that is evidenced by a record that is  
33 signed by the parties are not confidential. The agreement may be introduced  
34 in any proceeding to obtain court approval of the agreement, where required  
35 by law, or to enforce the agreement. If a party requests that all or a  
36 portion of the agreement remain confidential, the agreement may be disclosed  
37 to the court under seal with a request to issue appropriate orders to protect  
38 the confidentiality of the agreement, as permitted by law.

39 E. Notwithstanding subsection B OF THIS SECTION, threatened or actual  
40 violence that occurs during a mediation is not a privileged communication.  
41 The mediator may inform the parties that threatened or actual violence is not  
42 privileged and may be disclosed.

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

- 1           G. For the purposes of this section:  
2           1. "ABUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201 IF THE  
3 VICTIM IS A MINOR OR SECTION 46-451 IF THE VICTIM IS A VULNERABLE ADULT.  
4           2. "CHILD ABUSE" MEANS CHILD ABUSE PURSUANT TO SECTION 13-3623.  
5           3. "EXPLOITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.  
6           ~~1.~~ 4. "Mediation" means a process in which parties who are involved  
7 in a dispute enter into one or more private settlement discussions outside of  
8 a formal court proceeding with a neutral third party to try to resolve the  
9 dispute.  
10          5. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201 IF THE  
11 VICTIM IS A MINOR OR SECTION 46-451 IF THE VICTIM IS A VULNERABLE ADULT.  
12          6. "PHYSICAL INJURY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
13 13-105.  
14          ~~2.~~ 7. "Record" means information that is inscribed on a tangible  
15 medium or that is stored in an electronic or other medium and that is  
16 retrievable in a perceivable form.  
17          8. "REPORTABLE OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION  
18 13-3620.  
19          ~~3.~~ 9. "Sign" means to execute or adopt a tangible symbol with the  
20 present intent to authenticate a record or to attach or logically associate  
21 an electronic symbol, sound or process to or with a record with the present  
22 intent to authenticate a record.  
23          10. "VULNERABLE ADULT" HAS THE SAME MEANING PRESCRIBED IN SECTION  
24 13-3623.

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.

Passed the House March 30, 2016,

Passed the Senate February 8, 2016,

by the following vote: 56 Ayes,

by the following vote: 30 Ayes,

0 Nays, 4 Not Voting

0 Nays, 0 Not Voting

[Signature]  
Acting 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 was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

S.B. 1293

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 4, 2016

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

4th day of May, 2016

at 4:26 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 18th day of

May

at 9:03 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 18th day of May, 2016

at 12:05 o'clock P M.

[Signature]  
Secretary of State