

The Senate Committee on Judiciary offered the following substitute to SB 234:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as
2 to provide for uniform laws governing mediation and participants in mediation; to provide
3 for definitions; to provide for privileges against disclosure, admissibility, and discovery; to
4 provide for waiver and preclusion of privilege; to provide for exceptions to privilege; to
5 provide for confidentiality and mediator disclosure of conflicts; to provide for international
6 commercial mediation and electronic signatures; to provide for uniformity of construction
7 and severability; to provide for applicability; to provide a short title; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Georgia Uniform Mediation Act."

12 **SECTION 2.**

13 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
14 adding a new chapter to read as follows:

15

"CHAPTER 1716 9-17-1.17 As used in this chapter, the term:

18 (1) 'Mediation' means a process in which a mediator facilitates communication and
19 negotiation between parties to assist them in reaching a voluntary agreement regarding
20 their dispute.

21 (2) 'Mediation communication' means a statement, whether oral or in a record or verbal
22 or nonverbal, that occurs during a mediation or is made for purposes of considering,
23 conducting, participating in, initiating, continuing, terminating, or reconvening a
24 mediation or retaining a mediator.

25 (3) 'Mediation party' means a person that participates in a mediation and whose
26 agreement is necessary to resolve the dispute.

27 (4) 'Mediator' means an individual who conducts a mediation, or if conducting a
28 mediation pursuant to the Supreme Court of Georgia Alternative Dispute Resolution
29 Rules governing the use of alternative dispute resolution mechanisms by the courts of this
30 state, an individual qualified to mediate under such rules.

31 (5) 'Nonparty participant' means a person, other than a mediation party or mediator, that
32 participates in a mediation, including a representative of a party.

33 (6) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
34 limited liability company, association, joint venture, government; governmental
35 subdivision, agency, or instrumentality; public corporation; or any other legal or
36 commercial entity.

37 (7) 'Proceeding' means:

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

40 (B) A legislative hearing or similar process.

41 (8) 'Record' means information that is inscribed on a tangible medium or that is stored
42 in an electronic or other medium and is retrievable in perceivable form.

43 (9) 'Sign' means:

44 (A) To execute or adopt a tangible symbol with the present intent to authenticate a
45 record; or

46 (B) To attach or logically associate an electronic symbol, sound, or process to or with
47 a record with the present intent to authenticate a record.

48 9-17-2.

49 (a) Except as otherwise provided in subsection (b) or (c) of this Code section, this chapter
50 applies to a mediation in which:

51 (1) The mediation parties are required to mediate by statute or court or administrative
52 agency rule or referred to mediation by a court, administrative agency, or arbitrator;

53 (2) The mediation parties and the mediator agree to mediate in a record that demonstrates
54 an expectation that mediation communications will be privileged against disclosure; or

55 (3) The mediation parties use as a mediator an individual who holds himself or herself
56 out as a mediator or as a provider of mediation services.

57 (b) This chapter shall not apply to a mediation:

58 (1) Relating to the establishment, negotiation, administration, or termination of a
59 collective bargaining relationship;

60 (2) Relating to a dispute that is pending under or is part of the processes established by
61 a collective bargaining agreement, except that this chapter shall apply to a mediation
62 arising out of such a dispute that has been filed with an administrative agency or court;

63 (3) Conducted by a judge where that judge acts as a mediator and may still make a ruling
64 on the dispute; or

65 (4) Conducted under the auspices of:

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

67 (B) A correctional institution for persons who are under the age of 18 years if all the
68 mediation parties are residents of that institution.

69 (c) If the parties agree in advance in a signed record, or a record of proceeding reflects
70 agreement by the parties, that all or part of a mediation is not privileged, the privileges
71 under Code Sections 9-17-3 through 9-17-5 do not apply to the mediation or part agreed
72 upon. However, Code Sections 9-17-3 through 9-17-5 apply to a mediation
73 communication made by a person that has not received actual notice of the agreement
74 before the communication is made.

75 9-17-3.

76 (a) Except as otherwise provided in Code Section 9-17-6, a mediation communication is
77 privileged as provided in subsection (b) of this Code section and is not subject to discovery
78 or admissible in evidence in a proceeding unless waived or precluded as provided by Code
79 Section 9-17-4.

80 (b) In a proceeding, the following privileges apply:

81 (1) A mediation party may refuse to disclose and may prevent any other person from
82 disclosing a mediation communication;

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

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

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

90 9-17-4.

91 (a) A privilege under Code Section 9-17-3 may be waived in a record if it is expressly
92 waived by all mediation parties and:

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

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

96 (b) A person that discloses or makes a representation about a mediation communication
97 which prejudices another person in a proceeding is precluded from asserting a privilege
98 under Code Section 9-17-3, but only to the extent necessary for the person prejudiced to
99 respond to the representation or disclosure.

100 (c) A person that intentionally uses a mediation to plan, attempt to commit or commit a
101 crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from
102 asserting a privilege under Code Section 9-17-3.

103 9-17-5.

104 (a) There shall be no privilege under Code Section 9-17-3 for a mediation communication
105 that is:

106 (1) In an agreement evidenced by a record signed by all parties to the agreement;

107 (2) Available to the public under Article 4 of Chapter 18 of Title 50, relating to open
108 records, or made during a session of a mediation which is open, or is required by law to
109 be open, to the public;

110 (3) A threat or statement of a plan to inflict bodily injury or commit a criminal act of
111 violence;

112 (4) Intentionally used to plan a criminal act, to commit or attempt to commit a criminal
113 act, or to conceal an ongoing criminal act or criminal activity;

114 (5) Sought or offered to prove or disprove a claim or complaint of professional
115 misconduct or malpractice filed against a mediator;

116 (6) Except as otherwise provided in subsection (c) of this Code section, sought or offered
117 to prove or disprove a claim or complaint of professional misconduct or malpractice filed
118 against a mediation party, nonparty participant, or representative of a party based on
119 conduct occurring during a mediation; or

120 (7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation
121 in a proceeding in which a child or adult protective services agency is a party, unless the
122 public agency participates in the Division of Family and Children Services mediation.

123 (b) There shall be no privilege under Code Section 9-17-3 if a court, administrative
124 agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the
125 proponent of the evidence has shown that the evidence is not otherwise available, that there
126 is a need for the evidence that substantially outweighs the interest in protecting
127 confidentiality, and that the mediation communication is sought or offered in:

128 (1) A court proceeding involving a felony; or

129 (2) Except as otherwise provided in subsection (c) of this Code section, a proceeding to
130 prove a claim to rescind or reform or a defense to avoid liability on a contract arising out
131 of the mediation.

132 (c) A mediator shall not be compelled to provide evidence of a mediation communication
133 referred to in paragraph (6) of subsection (a) or paragraph (2) of subsection (b) of this Code
134 section.

135 (d) If a mediation communication is not privileged under subsection (a) or (b) of this Code
136 section, only the portion of the communication necessary for the application of the
137 exception from nondisclosure may be admitted. Admission of evidence under
138 subsection (a) or (b) of this Code section does not render the evidence, or any other
139 mediation communication, discoverable or admissible for any other purpose.

140 9-17-6.

141 (a) Except as provided in subsection (b) of this Code section, a mediator shall not make
142 a report, assessment, evaluation, recommendation, finding, or other communication
143 regarding a mediation to a court, administrative agency, or other authority that may make
144 a ruling on the dispute that is the subject of the mediation.

145 (b) A mediator may disclose:

146 (1) Whether the mediation occurred or has terminated, whether a settlement was reached,
147 and attendance;

148 (2) A mediation communication as permitted under Code Section 9-17-5; or

149 (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation
150 of an individual to a public agency responsible for protecting individuals against such
151 mistreatment.

152 (c) A communication made in violation of subsection (a) of this Code section may not be
153 considered by a court, administrative agency, or arbitrator.

154 9-17-7.

155 Notwithstanding any provision of this chapter to the contrary, mediation and mediation
156 communications, and such related conduct, shall not be admissible or subject to disclosure,
157 except to the extent agreed to by the parties in writing or as provided in Code Section
158 24-4-408 or other law or court required rule of this state, unless such communications are
159 subject to Article 4 of Chapter 18 of Title 50, relating to open records.

160 9-17-8.

161 (a) Before accepting a mediation, an individual who is requested to serve as a mediator
162 shall:

163 (1) Make an inquiry that is reasonable under the circumstances to determine whether
164 there are any known facts that a reasonable individual would consider likely to affect the

165 impartiality of the mediator, including a financial or personal interest in the outcome of
166 the mediation and an existing or past relationship with a mediation party or foreseeable
167 participant in the mediation; and

168 (2) Disclose any such known fact to the mediation parties as soon as is practical before
169 accepting a mediation.

170 (b) If a mediator learns any fact described in paragraph (1) of subsection (a) of this Code
171 section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

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

174 (d) A person that violates subsection (a) or (b) of this Code section is precluded by the
175 violation from asserting a privilege under Code Section 9-17-3.

176 (e) Subsection (a), (b), or (c) of this Code section shall not apply to an individual acting
177 as a judge.

178 (f) This chapter shall not require that a mediator have a special qualification by
179 background or profession.

180 9-17-9.

181 An attorney or other individual designated by a party may accompany the party to and
182 participate in a mediation. A waiver of participation given before the mediation may be
183 rescinded.

184 9-17-10.

185 (a) As used in this Code section, the term 'Model Law' means the Model Law on
186 International Commercial Mediation and International Settlement Agreements Resulting
187 from Mediation, as approved at the 51st Session of the United Nations Commission on
188 International Trade Law on June 26, 2018.

189 (b) Except as otherwise provided in subsections (c) and (d) of this Code section, if a
190 mediation is an international commercial mediation as defined by the Model Law, the
191 mediation is governed by the Model Law.

192 (c) Unless the parties agree in accordance with subsection (c) of Code Section 9-17-2, that
193 all or part of an international commercial mediation is not privileged, Code
194 Sections 9-17-3, 9-17-4, and 9-17-5 and any applicable definitions in Code Section 9-17-1
195 also apply to the mediation and nothing in Article 11 of the Model Law derogates from
196 Code Sections 9-17-3, 9-17-4, and 9-17-5.

197 (d) If the parties to an international commercial mediation agree that the Model Law shall
198 not apply, this chapter shall apply.

199 9-17-11.

200 This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and
201 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or
202 supersede Section 101(c) of such act or authorize electronic delivery of any of the notices
203 described in Section 103(b) of such act.

204 9-17-12.

205 In applying and construing this chapter, consideration should be given to the need to
206 promote uniformity of the law with respect to its subject matter among states that enact it.

207 9-17-13.

208 If any provision of this chapter or its application to any person or circumstance is held
209 invalid, the invalidity shall not affect other provisions or applications of this chapter which
210 can be given effect without the invalid provision or application, and to this end the
211 provisions of this chapter are severable.

212 9-17-14.

213 This chapter shall apply to all mediation agreements and mediation proceedings entered

214 into on or after July 1, 2021."

215

SECTION 3.

216 All laws and parts of laws in conflict with this Act are repealed.