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1                                   A bill to be entitled  
 2           An act relating to mediation alternatives to judicial  
 3           action; amending s. 44.102, F.S.; deleting language  
 4           regarding the disclosure of specified information made  
 5           during court-ordered mediation; amending s. 44.107, F.S.;  
 6           providing immunity from liability for trainees in the  
 7           Supreme Court's mentorship program; providing immunity  
 8           from liability for persons serving as mediators in  
 9           specified circumstances; amending s. 44.201, F.S.;  
 10          deleting language regarding disclosure of specified  
 11          information held by Citizen Dispute Resolution Centers;  
 12          creating ss. 44.401-44.406, F.S.; providing a popular  
 13          name; providing for the creation of the Mediation  
 14          Confidentiality and Privilege Act; providing for  
 15          application; providing definitions; specifying when a  
 16          mediation begins and ends; providing for confidentiality  
 17          of mediation communications; providing for a privilege;  
 18          providing exceptions; providing for civil remedies;  
 19          providing a statute of limitation; providing an exception;  
 20          amending s. 61.183, F.S.; deleting language regarding  
 21          disclosure of specified information made during cases;  
 22          providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Subsections (3) and (4) of section 44.102,  
 27   Florida Statutes, are amended to read:  
 28           44.102 Court-ordered mediation.--

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29           (3) ~~Each party involved in a court-ordered mediation~~  
 30 ~~proceeding has a privilege to refuse to disclose, and to prevent~~  
 31 ~~any person present at the proceeding from disclosing,~~  
 32 ~~communications made during such proceeding.~~ All oral or written  
 33 communications in a mediation proceeding, other than an executed  
 34 settlement agreement, shall be exempt from the requirements of  
 35 chapter 119 and shall be confidential and inadmissible as  
 36 evidence in any subsequent legal proceeding, unless all parties  
 37 agree otherwise.

38           (4) ~~There shall be no privilege and no restriction on any~~  
 39 ~~disclosure of communications made confidential in subsection (3)~~  
 40 ~~in relation to disciplinary proceedings filed against mediators~~  
 41 ~~pursuant to s. 44.106 and court rules, to the extent the~~  
 42 ~~communication is used for the purposes of such proceedings. In~~  
 43 ~~such cases, the disclosure of an otherwise privileged~~  
 44 ~~communication shall be used only for the internal use of the~~  
 45 ~~body conducting the investigation. Prior to the release of any~~  
 46 ~~disciplinary files to the public, all references to otherwise~~  
 47 ~~privileged communications shall be deleted from the record. When~~  
 48 ~~an otherwise confidential communication is used in a mediator~~  
 49 ~~disciplinary proceeding, such communication shall be~~  
 50 ~~inadmissible as evidence in any subsequent legal proceeding.~~  
 51 ~~"Subsequent legal proceeding" means any legal proceeding between~~  
 52 ~~the parties to the mediation which follows the court-ordered~~  
 53 ~~mediation.~~

54           Section 2. Section 44.107, Florida Statutes, is amended to  
 55 read:

56           44.107 Immunity for arbitrators, and mediators, and  
 57 mediator trainees.--

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58        (1) Arbitrators serving ~~An Arbitrator appointed~~ under s.  
 59        44.103 or s. 44.104, mediators serving or a mediator appointed  
 60        under s. 44.102, and trainees fulfilling the mentorship  
 61        requirements for certification by the Supreme Court as a  
 62        mediator shall have judicial immunity in the same manner and to  
 63        the same extent as a judge.

64        (2) A person serving as a mediator in any noncourt-ordered  
 65        mediation shall have immunity from liability arising from the  
 66        performance of that person's duties while acting within the  
 67        scope of the mediation function if such mediation is:

68                (a) Required by statute or agency rule or order;

69                (b) Conducted under ss. 44.401-44.406 by express agreement  
 70        of the mediation parties; or

71                (c) Facilitated by a mediator certified by the Supreme  
 72        Court, unless the mediation parties expressly agree not to be  
 73        bound by ss. 44.401-44.406.

74  
 75        The mediator does not have immunity if he or she acts in bad  
 76        faith, with malicious purpose, or in a manner exhibiting wanton  
 77        and willful disregard of human rights, safety, or property.

78        (3) A person serving ~~appointed~~ under s. 44.106 to assist  
 79        the Supreme Court in performing its disciplinary function shall  
 80        have absolute immunity from liability arising from the  
 81        performance of that person's duties while acting within the  
 82        scope of that person's appointed function.

83        Section 3. Subsection (5) of section 44.201, Florida  
 84        Statutes, is amended to read:

85                44.201 Citizen Dispute Settlement Centers; establishment;  
 86        operation; confidentiality.--

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87 (5) Any information relating to a dispute obtained by any  
 88 person while performing any duties for the center from the  
 89 files, reports, case summaries, mediator's notes, or other  
 90 communications or materials, ~~oral or written,~~ is confidential  
 91 and exempt from the provisions of s. 119.07(1) and shall not be  
 92 publicly disclosed without the written consent of all parties to  
 93 the dispute. Any research or evaluation effort directed at  
 94 assessing program activities or performance shall protect the  
 95 confidentiality of such information. Each party to a Citizen  
 96 Dispute Settlement Center proceeding has a privilege during and  
 97 after those proceedings to refuse to disclose and to prevent  
 98 another from disclosing communications made during such  
 99 proceedings, whether or not the dispute was successfully  
 100 resolved. This subsection shall not be construed to prevent or  
 101 inhibit the discovery or admissibility of any information which  
 102 is otherwise subject to discovery or which is admissible under  
 103 applicable law or rules of court, except that any conduct or  
 104 statements made during such mediation sessions or in  
 105 negotiations concerning such sessions shall be inadmissible in  
 106 any judicial proceeding.

107 Section 4. Sections 44.401, 44.402, 44.403, 44.404,  
 108 44.405, and 44.406, Florida Statutes, are created to read:

109 44.401 Mediation Confidentiality and Privilege  
 110 Act.--Sections 44.401-44.406 may be known by the popular name  
 111 the "Mediation Confidentiality and Privilege Act."

112 44.402 Scope.--

113 (1) Except as otherwise provided, ss. 44.401-44.406 apply  
 114 to any mediation:

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115 (a) Required by statute, court rule, agency rule or order,  
 116 oral or written case-specific court order, or court  
 117 administrative order;

118 (b) Conducted under ss. 44.401-44.406 by express agreement  
 119 of the mediation parties; or

120 (c) Facilitated by a mediator certified by the Supreme  
 121 Court, unless the mediation parties expressly agree not to be  
 122 bound by ss. 44.401-44.406.

123 (2) Notwithstanding any other provision, the mediation  
 124 parties may agree in writing that any or all of s. 44.405(1), s.  
 125 44.405(2), or s. 44.406 will not apply to all or part of a  
 126 mediation proceeding.

127 44.403 Definitions.--As used in ss. 44.401-44.406, the  
 128 term:

129 (1) "Mediation communication" means an oral or written  
 130 statement, or nonverbal conduct intended to make an assertion,  
 131 by or to a mediation participant made during the course of a  
 132 mediation, or prior to mediation if made in furtherance of a  
 133 mediation. The commission of a crime during a mediation is not a  
 134 mediation communication.

135 (2) "Mediation participant" means a mediation party or a  
 136 person who attends a mediation in person or by telephone, video  
 137 conference, or other electronic means.

138 (3) "Mediation party" or "party" means a person  
 139 participating directly, or through a designated representative,  
 140 in a mediation and a person who:

141 (a) Is a named party;

142 (b) Is a real party in interest; or

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143 (c) Would be a named party or real party in interest if an  
 144 action relating to the subject matter of the mediation were  
 145 brought in a court of law.

146 (4) "Mediator" means a neutral, impartial third person who  
 147 facilitates the mediation process. The mediator's role is to  
 148 reduce obstacles to communication, assist in identifying issues,  
 149 explore alternatives, and otherwise facilitate voluntary  
 150 agreements to resolve disputes, without prescribing what the  
 151 resolution must be.

152 (5) "Subsequent proceeding" means an adjudicative process  
 153 that follows a mediation, including related discovery.

154 44.404 Mediation; duration.--

155 (1) A court-ordered mediation begins when an order is  
 156 issued by the court and ends when:

157 (a) A partial or complete settlement agreement, intended  
 158 to resolve the dispute and end the mediation, is signed by the  
 159 parties and, if required by law, approved by the court;

160 (b) The mediator declares an impasse by reporting to the  
 161 court or the parties the lack of an agreement;

162 (c) The mediation is terminated by court order, court  
 163 rule, or applicable law; or

164 (d) The mediation is terminated, after party compliance  
 165 with the court order to appear at mediation, by:

166 1. Agreement of the parties; or

167 2. One party giving written notice to all other parties in  
 168 a multiparty mediation that the one party is terminating its  
 169 participation in the mediation. Under this circumstance, the  
 170 termination is effective only for the withdrawing party.

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171 (2) In all other mediations, the mediation begins when the  
 172 parties agree to mediate or as required by agency rule, agency  
 173 order, or statute, whichever occurs earlier, and ends when:

174 (a) A partial or complete settlement agreement, intended  
 175 to resolve the dispute and end the mediation, is signed by the  
 176 parties and, if required by law, approved by the court;

177 (b) The mediator declares an impasse to the parties;

178 (c) The mediation is terminated by court order, court  
 179 rule, or applicable law; or

180 (d) The mediation is terminated by:

181 1. Agreement of the parties; or

182 2. One party giving notice to all other parties in a  
 183 multiparty mediation that the one party is terminating its  
 184 participation in the mediation. Under this circumstance, the  
 185 termination is effective only for the withdrawing party.

186 44.405 Confidentiality; privilege; exceptions.--

187 (1) Except as provided in this section, all mediation  
 188 communications shall be confidential. A mediation participant  
 189 shall not disclose a mediation communication to a person other  
 190 than another mediation participant or a participant's counsel. A  
 191 violation of this section may be remedied as provided by s.  
 192 44.406. If the mediation is court ordered, a violation of this  
 193 section may also subject the mediation participant to sanctions  
 194 by the court, including, but not limited to, costs, attorney's  
 195 fees, and mediator's fees.

196 (2) A mediation party has a privilege to refuse to testify  
 197 and to prevent any other person from testifying in a subsequent  
 198 proceeding regarding mediation communications.

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199       (3) If, in a mediation involving more than two parties, a  
 200 party gives written notice to the other parties that the party  
 201 is terminating its participation in the mediation, the party  
 202 giving notice shall have a privilege to refuse to testify and to  
 203 prevent any other person from testifying in a subsequent  
 204 proceeding regarding only those mediation communications that  
 205 occurred prior to the delivery of the written notice of  
 206 termination of mediation to the other parties.

207       (4)(a) Notwithstanding subsections (1) and (2), there is  
 208 no confidentiality or privilege attached to a signed written  
 209 agreement reached during a mediation, unless the parties agree  
 210 otherwise, or for any mediation communication:

211           1. For which the confidentiality or privilege against  
 212 disclosure has been waived by all parties;

213           2. That is willfully used to plan a crime, commit or  
 214 attempt to commit a crime, conceal ongoing criminal activity, or  
 215 threaten violence;

216           3. That requires a mandatory report pursuant to chapter 39  
 217 or chapter 415 solely for the purpose of making the mandatory  
 218 report to the entity requiring the report;

219           4. Offered to report, prove, or disprove professional  
 220 malpractice, solely for the purpose of the professional  
 221 malpractice proceeding;

222           5. Offered for the limited purpose of establishing or  
 223 refuting legally recognized grounds for voiding or reforming a  
 224 settlement agreement reached during a mediation; or

225           6. Offered to report, prove, or disprove professional  
 226 misconduct, solely for the internal use of the body conducting  
 227 the investigation of the conduct.



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228 (b) A mediation communication disclosed under any  
 229 provision of subparagraphs (4)(a)3., (4)(a)4., (4)(a)5., or  
 230 (4)(a)6. remains confidential and is not discoverable or  
 231 admissible for any other purpose, unless otherwise permitted by  
 232 this section.

233 (5) Information that is otherwise admissible or subject to  
 234 discovery does not become inadmissible or protected from  
 235 discovery by reason of its disclosure or use in mediation.

236 (6) A party that discloses or makes a representation about  
 237 a privileged mediation communication waives that privilege, but  
 238 only to the extent necessary for the other party to respond to  
 239 the disclosure or representation.

240 44.406 Confidentiality; civil remedies.--

241 (1) Any mediation participant who knowingly and willfully  
 242 discloses a mediation communication in violation of s. 44.405  
 243 shall, upon application by any party to a court of competent  
 244 jurisdiction, be subject to remedies, including:

245 (a) Equitable relief.

246 (b) Compensatory damages.

247 (c) Attorney's fees, mediator's fees, and costs incurred  
 248 in the mediation proceeding.

249 (d) Reasonable attorney's fees and costs incurred in the  
 250 application for remedies under this section.

251 (2) Notwithstanding any other law, an application for  
 252 relief filed under this section may not be commenced later than  
 253 2 years after the date on which the party had a reasonable  
 254 opportunity to discover the breach of confidentiality, but in no  
 255 case more than 4 years after the date of the breach.

256 (3) A mediation participant shall not be subject to a

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257 civil action under this section for lawful compliance with the  
 258 provisions of s. 119.07.

259 Section 5. Subsection (3) of section 61.183, Florida  
 260 Statutes, is amended to read:

261 61.183 Mediation of certain contested issues.--

262 (3) Any information from the files, reports, case  
 263 summaries, mediator's notes, or other communications or  
 264 materials, ~~oral or written,~~ relating to a mediation proceeding  
 265 pursuant to this section obtained by any person performing  
 266 mediation duties is ~~confidential and~~ exempt from the provisions  
 267 of s. 119.07(1) ~~and may not be disclosed without the written~~  
 268 ~~consent of all parties to the proceeding. Any research or~~  
 269 ~~evaluation effort directed at assessing program activities or~~  
 270 ~~performance must protect the confidentiality of such~~  
 271 ~~information. Each party to a mediation proceeding has a~~  
 272 ~~privilege during and after the proceeding to refuse to disclose~~  
 273 ~~and to prevent another from disclosing communications made~~  
 274 ~~during the proceeding, whether or not the contested issues are~~  
 275 ~~successfully resolved. This subsection shall not be construed to~~  
 276 ~~prevent or inhibit the discovery or admissibility of any~~  
 277 ~~information that is otherwise subject to discovery or that is~~  
 278 ~~admissible under applicable law or rules of court, except that~~  
 279 ~~any conduct or statements made during a mediation proceeding or~~  
 280 ~~in negotiations concerning the proceeding are inadmissible in~~  
 281 ~~any judicial proceeding.~~

282 Section 6. This act shall take effect July 1, 2004.