

**ASSEMBLY BILL**

**No. 2025**

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**Introduced by Assembly Member Wagner**

February 23, 2012

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An act to amend Section 1120 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2025, as introduced, Wagner. Evidence: admissibility.

Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation services, or when parties agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of the consultation for mediation services or in the course of the mediation is not admissible in evidence nor subject to discovery in any other action or proceeding. Existing law provides that evidence that is otherwise admissible is not inadmissible solely because it was introduced or used in a mediation or mediation consultation. Additionally, existing law provides that an agreement to mediate a dispute or to extend the time within which to act or refrain from acting in a civil action is admissible, as is the mere fact that a mediator served, is serving, will serve, or was contacted about serving as a mediator in the dispute.

This bill would provide that communications between a client and his or her attorney during mediation are admissible in an action for legal malpractice or breach of fiduciary duty, or both, and in a State Bar disciplinary action, if the attorney's professional negligence or misconduct forms the basis of the client's allegations against the attorney.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1120 of the Evidence Code is amended  
2 to read:  
3 1120. (a) Evidence otherwise admissible or subject to  
4 discovery outside of a mediation or a mediation consultation shall  
5 not be or become inadmissible or protected from disclosure solely  
6 by reason of its introduction or use in a mediation or a mediation  
7 consultation.  
8 (b) This chapter does not limit any of the following:  
9 (1) The admissibility of an agreement to mediate a dispute.  
10 (2) The effect of an agreement not to take a default or an  
11 agreement to extend the time within which to act or refrain from  
12 acting in a pending civil action.  
13 (3) Disclosure of the mere fact that a mediator has served, is  
14 serving, will serve, or was contacted about serving as a mediator  
15 in a dispute.  
16 (4) *The admissibility in an action for legal malpractice, an*  
17 *action for breach of fiduciary duty, or both, or in a State Bar*  
18 *disciplinary action, of communications directly between the client*  
19 *and his or her attorney during mediation if professional negligence*  
20 *or misconduct forms the basis of the client's allegations against*  
21 *the attorney.*