

Senate Bill No. 1522

CHAPTER 174

An act to amend Section 1152.5 of the Evidence Code, relating to mediation.

[Approved by Governor July 16, 1996. Filed with Secretary of State July 17, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1522, Greene. Mediation services: confidentiality.

Under existing law, when persons 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 mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential. If the testimony of a mediator is sought to be compelled in any civil action or proceeding regarding anything said in the course of a mediation, the court is required to award reasonable attorney's fees and costs to the mediator against the person seeking the testimony.

This bill would make these provisions applicable when a person consults a mediator or mediation service for the purpose of retaining mediation services.

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

SECTION 1. Section 1152.5 of the Evidence Code is amended to read:

1152.5. (a) When a person consults a mediator or mediation service for the purpose of retaining the mediator or mediation service, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute in whole or in part:

(1) Except as otherwise provided in this section, evidence of anything said or of any admission made in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(2) Except as otherwise provided in this section, unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence or subject to discovery, and disclosure of such a document shall not be compelled, in any civil



action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(3) When a person consults a mediator or mediation service for the purpose of retaining the mediator or mediation service, or when persons agree to conduct or participate in mediation for the sole purpose of compromising, settling, or resolving a dispute, in whole or in part, all communications, negotiations, or settlement discussions by and between participants or mediators in the course of a consultation for mediation services or in the mediation shall remain confidential.

(4) All or part of a communication or document which may be otherwise privileged or confidential may be disclosed if all parties who conduct or otherwise participate in a mediation so consent.

(5) A written settlement agreement, or part thereof, is admissible to show fraud, duress, or illegality if relevant to an issue in dispute.

(6) Evidence otherwise admissible or subject to discovery outside of mediation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation.

(b) This section does not apply where the admissibility of the evidence is governed by Section 1818 or 3177 of the Family Code.

(c) Nothing in this section makes admissible evidence that is inadmissible under Section 1152 or any other statutory provision, including, but not limited to, the sections listed in subdivision (d). Nothing in this section limits the confidentiality provided pursuant to Section 65 of the Labor Code.

(d) If the testimony of a mediator is sought to be compelled in any action or proceeding as to anything said or any admission made in the course of a consultation for mediation services or in the course of the mediation that is inadmissible and not subject to disclosure under this section, the court shall award reasonable attorney's fees and costs to the mediator against the person or persons seeking that testimony.

(e) Paragraph (2) of subdivision (a) does not limit the effect of an agreement not to take a default in a pending civil action.

