

Study K-401

July 16, 1997

## Memorandum 97-51

**AB 939: Mediation Confidentiality**

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The Commission's bill on mediation confidentiality, AB 939 (Ortiz, Ackerman), was passed by the Assembly in April and is now pending in the Senate Judiciary Committee. The bill is likely to be heard after the Legislature reconvenes in August. If negotiations over the state budget are protracted and the Legislature does not recess this week, the hearing may be on July 22, 1997.

The current version of the bill is attached as Exhibit pages 1-15. The bill has been amended twice since the Commission last saw it. The first set of amendments incorporated changes approved by the Commission at its May meeting and addressed concerns raised by the State Bar Committee on Administration of Justice ("CAJ") after that meeting. The staff consulted with the Commission's Chairperson and Vice Chairperson regarding the amendments to meet CAJ's concerns.

The second set of amendments (shown in ~~strikeout~~ and *italics* in the attached version of the bill) stems from a recent meeting focusing on concerns of the Consumer Attorneys of California ("CAOC") and the California Defense Counsel ("CDC"). The meeting was attended by representatives of those organizations, as well as the Chief Counsel of the Senate Judiciary Committee, a consultant to Assembly Member Ortiz, mediator Ron Kelly, a consultant to Assemblyman Ackerman, counsel for the Assembly Republican Caucus, a representative of the Association for California Tort Reform, and a staff attorney from the Commission. A few further amendments have been requested since that meeting.

At this point, the substantive amendments directed to concerns raised by CAOC and CDC appear essential if the bill is to pass. With those amendments, the bill will still implement important reforms, including resolution of the conflict in appellate decisions on confidentiality of an oral agreement reached in mediation, clarification of the procedures for reaching an enforceable agreement, and elimination of ambiguities in the provision restricting a mediator from reporting to the decisionmaker. Briefly, the new amendments are:

- (1) Amendment of proposed Evidence Code Section 1117(a) to read: "Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115." (Exhibit p. 4.) CAOC and

CDC interpreted the previous version of Section 1117(a) as expressing approval of mandatory mediation. The intent was not to express approval of mandatory mediation, but rather to ensure that the confidentiality provisions apply to all mediations. Because “mediation” is broadly defined in Section 1115, Section 1117(a) as amended should effectuate that intent, while omitting language offensive to CAOC and CDC.

(2) Deletion of proposed Section 1118 (Exhibit pp. 4-5), the provision on mediation-arbitration, which has been controversial throughout this study. (See, e.g., Memorandum 97-33 at p. 5 & Exhibit p. 19; Memorandum 96-75 at pp. 11-14.)

(3) Modification of the procedure in Section 1119, such that the recorded oral agreement must be transcribed and the transcript “executed by the parties within 72 hours after it is recorded.” (Exhibit p. 5.) The California Dispute Resolution Council has requested a further change: Instead of requiring that the recording be “transcribed” and the transcript “executed,” Section 1119(d) would require that “the recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.” This apparently noncontroversial revision would be implemented through an author’s amendment at the hearing.

(4) Elimination of language in Sections 1124 and 1125 on how confidentiality applies to partial resolution of a dispute. (Exhibit pp. 7-8.) Those issues would be left to the courts.

(5) Addition of language to Sections 1124 and 1125 clarifying that those provisions do not prevent parties from leaving a mediation without reaching an agreement. Subdivision (c) of each provision now states: “Nothing in this section shall preclude a party from ending the mediation without reaching an agreement.” (Exhibit pp. 7-8.)

(6) Revision of Sections 1123, 1124, and 1125 to make clear that they are subject to Section 1121(a), which essentially prevents a party from shielding a “smoking gun” by using it in a mediation. This would be done at the hearing through an author’s amendment revising the introductory clause of Sections 1123, 1124, and 1125 to read: “Notwithstanding any other provision of this chapter except Section 1121.”

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel

AMENDED IN SENATE JULY 10, 1997  
AMENDED IN SENATE JUNE 11, 1997  
AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 939**

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**Introduced by Assembly Member Ortiz  
(Principal coauthor: Assembly Member Ackerman)**

February 27, 1997

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An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, to amend Section 703.5 of, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Ortiz. Mediation.

(1) Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation services, or 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, except as specified. 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. Existing law provides that a mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, except as specified.

This bill would, among other things, revise and recast these provisions, as specified, to apply to a mediation ordered by a court or other adjudicative body, and to a mediation consultation, would define the terms "mediation," "mediator," and "mediation consultation" for this purpose and make corresponding changes.

(2) Existing law provides that if an insured party and an insurer reach an agreement proposed during mediation, the insured will have 3 business days to rescind the agreement.

This bill would provide that if such rescission occurs, the agreement may not be admitted ~~in evidence~~ or disclosed unless all the parties to the agreement agree to its disclosure.

(3) Existing law provides that records of the Department of Industrial Relations relating to labor disputes are confidential, except that any decision or award arising out of arbitration proceedings shall be a public record.

This bill would apply the provisions of this bill described in (1) above to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting the mediation. It would provide that all other records relating to labor disputes are confidential, except as specified.

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 467.5 of the Business and  
2 Professions Code is amended to read:

1 467.5. Notwithstanding the express application of  
2 Chapter 2 (commencing with Section 1115) of Division  
3 9 of the Evidence Code to mediations, all proceedings  
4 conducted by a program funded pursuant to this chapter,  
5 including, but not limited to, arbitrations and  
6 conciliations, are subject to Chapter 2 (commencing with  
7 Section 1115) of Division 9 of the Evidence Code.

8 SEC. 2. Section 1775.10 of the Code of Civil Procedure  
9 is amended to read:

10 1775.10. All statements made by the parties during  
11 the mediation shall be subject to Sections 703.5 and 1152,  
12 and Chapter 2 (commencing with Section 1115) of  
13 Division 9, of the Evidence Code.

14 SEC. 3. Section 703.5 of the Evidence Code is  
15 amended to read:

16 703.5. No person presiding at any judicial or  
17 quasi-judicial proceeding, and no arbitrator or mediator,  
18 shall be competent to testify, in any subsequent  
19 arbitration, administrative adjudication, civil action, or  
20 other noncriminal proceeding, as to any statement,  
21 conduct, decision, or ruling, occurring at or in  
22 conjunction with the prior proceeding, except as to a  
23 statement or conduct that could (a) give rise to civil or  
24 criminal contempt, (b) constitute a crime, (c) be the  
25 subject of investigation by the State Bar or Commission  
26 on Judicial Performance, or (d) give rise to  
27 disqualification proceedings under paragraph (1) or (6)  
28 of subdivision (a) of Section 170.1 of the Code of Civil  
29 Procedure. However, this section does not apply to a  
30 mediator with regard to any mediation under Chapter 11  
31 (commencing with Section 3160) of Part 2 of Division 8  
32 of the Family Code.

33 SEC. 4. Chapter 2 (commencing with Section 1115)  
34 is added to Division 9 of the Evidence Code, to read:

35  
36 CHAPTER 2. MEDIATION  
37

38 1115. For purposes of this chapter:

39 (a) "Mediation" means a process in which a neutral  
40 person or persons facilitate communication between the

1 disputants to assist them in reaching a mutually  
2 acceptable agreement.

3 (b) “Mediator” means a neutral person who conducts  
4 a mediation. “Mediator” includes any person designated  
5 by a mediator either to assist in the mediation or to  
6 communicate with the participants in preparation for a  
7 mediation.

8 (c) “Mediation consultation” means a communication  
9 between a person and a mediator for the purpose of  
10 initiating, considering, or reconvening a mediation or  
11 retaining the mediator.

12 1116. (a) Nothing in this chapter expands or limits a  
13 court’s authority to order participation in a dispute  
14 resolution proceeding. Nothing in this chapter authorizes  
15 or affects the enforceability of a contract clause in which  
16 parties agree to the use of mediation.

17 (b) Nothing in this chapter makes admissible evidence  
18 that is inadmissible under Section 1152 or any other  
19 statute.

20 1117. (a) Except as provided in subdivision (b), this  
21 chapter applies to ~~any mediation, regardless of whether~~  
22 ~~participation in the mediation is voluntary, pursuant to an~~  
23 ~~agreement, pursuant to order of a court or other~~  
24 ~~adjudicative body, or otherwise.~~ *a mediation as defined in*  
25 *Section 1115.*

26 (b) This chapter does not apply to either of the  
27 following:

28 (1) A proceeding under Part 1 (commencing with  
29 Section 1800) of Division 5 of the Family Code or Chapter  
30 11 (commencing with Section 3160) of Part 2 of Division  
31 8 of the Family Code.

32 (2) A settlement conference pursuant to Rule 222 of  
33 the California Rules of Court.

34 ~~1118. (a) This chapter does not prohibit either of the~~  
35 ~~following:~~

36 ~~(1) A premediation agreement that, if mediation does~~  
37 ~~not fully resolve the dispute, the mediator will then act as~~  
38 ~~arbitrator or otherwise render a decision in the dispute.~~

1     ~~(2) A postmediation agreement that the mediator will~~  
2 ~~arbitrate or otherwise decide issues not resolved in the~~  
3 ~~mediation.~~

4     ~~(b) If a dispute is governed by an agreement described~~  
5 ~~in subdivision (a), in arbitrating or otherwise deciding all~~  
6 ~~or part of the dispute, the person who served as mediator~~  
7 ~~may not consider any information from the mediation~~  
8 ~~that is inadmissible or protected from disclosure under~~  
9 ~~this chapter, unless all of the parties to the mediation~~  
10 ~~expressly agree in writing, or orally in accordance with~~  
11 ~~Section 1119, before or after the mediation that the~~  
12 ~~person may use specific information from the mediation.~~

13     1119. An oral agreement “in accordance with Section  
14 1119” means an oral agreement that satisfies all of the  
15 following conditions:

16     (a) The oral agreement is recorded by a court  
17 reporter, tape recorder, or other reliable means of sound  
18 recording.

19     (b) The terms of the oral agreement are recited on the  
20 record in the presence of the parties and the mediator,  
21 and the parties express on the record that they agree to  
22 the terms recited.

23     (c) The parties to the oral agreement expressly state  
24 on the record that the agreement is enforceable or  
25 binding or words to that effect.

26     ~~(d) The recording is transcribed and the transcript is~~  
27 ~~executed by the parties within 72 hours after it is~~  
28 ~~recorded.~~

29     1120. (a) Except as otherwise expressly provided by  
30 statute, no evidence of anything said or any admission  
31 made for the purpose of, in the course of, or pursuant to,  
32 a mediation or a mediation consultation is admissible—~~in~~  
33 ~~evidence~~ or subject to discovery, and disclosure of the  
34 evidence shall not be compelled, in any arbitration,  
35 administrative adjudication, civil action, or other  
36 noncriminal proceeding in which, pursuant to law,  
37 testimony can be compelled to be given.

38     (b) Except as otherwise expressly provided by statute,  
39 no document, or writing as defined in Section 250, or copy  
40 of a document or writing, that is prepared for the purpose

1 of, in the course of, or pursuant to, a mediation or a  
2 mediation consultation, is admissible ~~in—evidence~~ or  
3 subject to discovery, and disclosure of the document or  
4 writing shall not be compelled, in any arbitration,  
5 administrative adjudication, civil action, or other  
6 noncriminal proceeding in which, pursuant to law,  
7 testimony can be compelled to be given.

8 (c) All communications, negotiations, or settlement  
9 discussions by and between participants in the course of  
10 a mediation or a mediation consultation shall remain  
11 confidential.

12 1121. (a) Notwithstanding any other provision of this  
13 chapter, evidence otherwise admissible or subject to  
14 discovery outside of a mediation or a mediation  
15 consultation shall not be or become inadmissible or  
16 protected from disclosure solely by reason of its  
17 introduction or use in a mediation or a mediation  
18 consultation.

19 (b) This chapter does not limit any of the following:

20 (1) The admissibility of an agreement to mediate a  
21 dispute.

22 (2) The effect of an agreement not to take a default or  
23 an agreement to extend the time within which to act or  
24 refrain from acting in a pending civil action.

25 (3) Disclosure of the mere fact that a mediator has  
26 served, is serving, will serve, or was contacted about  
27 serving as a mediator in a dispute.

28 1122. Neither a mediator nor anyone else may submit  
29 to a court or other adjudicative body, and a court or other  
30 adjudicative body may not consider, any report,  
31 assessment, evaluation, recommendation, or finding of  
32 any kind by the mediator concerning a mediation  
33 conducted by the mediator, other than a report that is  
34 mandated by court rule or other law and that states only  
35 whether an agreement was reached, unless all parties to  
36 the mediation expressly agree otherwise in writing, or  
37 orally in accordance with Section 1119.

38 1123. (a) Notwithstanding any other provision of this  
39 chapter, a communication, document, or any writing as  
40 defined in Section 250, that is made or prepared for the



1 purpose of, or in the course of, or pursuant to, a mediation  
2 or a mediation consultation, is not made inadmissible~~into~~  
3 ~~evidence~~, or protected from disclosure, by provisions of  
4 this chapter if either of the following conditions is  
5 satisfied:

6 (1) All persons who conduct or otherwise participate  
7 in the mediation expressly agree in writing, or orally in  
8 accordance with Section 1119, to disclosure of the  
9 communication, document, or writing.

10 (2) The communication, document, or writing was  
11 prepared by or on behalf of fewer than all the mediation  
12 participants, those participants expressly agree in  
13 writing, or orally in accordance with Section 1119, to its  
14 disclosure, and the communication, document, or writing  
15 does not disclose anything said or done or any admission  
16 made in the course of the mediation.

17 (b) For purposes of subdivision (a), if the neutral  
18 person who conducts a mediation expressly agrees to  
19 disclosure, that agreement also binds any other person  
20 described in subdivision (b) of Section 1115.

21 1124. (a) Notwithstanding any other provision of this  
22 chapter, an executed written settlement agreement  
23 prepared in the course of, or pursuant to, a mediation, is  
24 not made inadmissible~~into evidence~~, or protected from  
25 disclosure, by provisions of this chapter if any of the  
26 following conditions is satisfied:

27 (1) The agreement provides that it is admissible or  
28 subject to disclosure, or words to that effect.

29 (2) The agreement provides that it is enforceable or  
30 binding or words to that effect.

31 (3) All parties to the agreement expressly agree in  
32 writing, or orally in accordance with Section 1119, to its  
33 disclosure.

34 (4) The agreement is used to show fraud, duress, or  
35 illegality that is relevant to an issue in dispute.

36 (b) ~~Unless~~ *For purposes of this chapter, unless* the  
37 parties expressly agree otherwise, in writing or orally in  
38 accordance with Section 1119, ~~when a written settlement~~  
39 ~~fully resolving the dispute is fully executed, the mediation~~  
40 ~~ends.~~

~~(e) Unless the parties expressly agree otherwise, in writing or orally in accordance with Section 1119, when a written settlement partially resolving the dispute is fully executed, the mediation ends as to the issues resolved. the mediation ends when the parties execute a written settlement agreement resolving the dispute.~~

*(c) Nothing in this section shall preclude a party from ending the mediation without reaching an agreement.*

1125. (a) Notwithstanding any other provision of this chapter, an oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible~~into~~ evidence, or protected from disclosure, by the provisions of this chapter if any of the following conditions is satisfied:

(1) The agreement is in accordance with Section 1119.

(2) The agreement is in accordance with subdivisions ~~(a) and (b)~~, (b), and (d) of Section 1119, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1119, to disclosure of the agreement.

(3) The agreement is in accordance with subdivisions ~~(a) and (b)~~, (b), and (d) of Section 1119, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

~~(b) Unless For purposes of this chapter, unless the parties expressly agree otherwise, in writing or orally in accordance with Section 1119, when an oral agreement fully resolving a dispute is reached in accordance with Section 1119, the mediation ends.~~

~~(e) Unless the parties expressly agree otherwise, in writing or orally in accordance with Section 1119, when an oral agreement partially resolving a dispute is reached in accordance with Section 1119, the mediation ends as to the issues resolved. the mediation ends when an oral agreement resolving the dispute is reached in accordance with Section 1119.~~

*(c) Nothing in this section shall preclude a party from ending the mediation without reaching an agreement.*

1126. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a document, and

1 the court or other adjudicative body determines that the  
2 testimony or document is inadmissible or protected from  
3 disclosure under Section 703.5 or this chapter, the court  
4 or adjudicative body making the determination shall  
5 award reasonable attorney's fees and costs to the  
6 mediator against the person seeking the testimony or  
7 document.

8 1127. Any reference to a mediation, or a declaration  
9 under Section 1125, during any subsequent trial is an  
10 irregularity in the proceedings of the trial for the  
11 purposes of Section 657 of the Code of Civil Procedure.  
12 Any reference to a mediation, or a declaration under  
13 Section 1125, during any other subsequent noncriminal  
14 proceeding is grounds for vacating or modifying the  
15 decision in that proceeding, in whole or in part, and  
16 granting a new or further hearing on all or part of the  
17 issues, if the reference materially affected the substantial  
18 rights of the party requesting relief.

19 SEC. 5. The heading of Chapter 2 (commencing with  
20 Section 1150) of Division 9 of the Evidence Code is  
21 amended and renumbered to read:

22  
23 CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED  
24 BY EXTRINSIC POLICIES  
25

26 SEC. 6. Section 1152.5 of the Evidence Code is  
27 repealed.

28 SEC. 7. Section 1152.6 of the Evidence Code is  
29 repealed.

30 SEC. 8. Section 66032 of the Government Code is  
31 amended to read:

32 66032. (a) Notwithstanding any provision of law to  
33 the contrary, all time limits with respect to an action shall  
34 be tolled while the mediator conducts the mediation,  
35 pursuant to this chapter.

36 (b) Mediations conducted by a mediator pursuant to  
37 this chapter that involve less than a quorum of a  
38 legislative body or a state body shall not be considered  
39 meetings of a legislative body pursuant to the Ralph M.  
40 Brown Act (Chapter 9 (commencing with Section 54950))

1 of Part 1 of Division 2 of Title 5), nor shall they be  
2 considered meetings of a state body pursuant to the  
3 Bagley-Keene Open Meeting Act (Article 9  
4 (commencing with Section 11120) of Chapter 1 of Part 1  
5 of Division 3 of Title 2).

6 (c) Any action taken regarding mediation conducted  
7 pursuant to this chapter shall be taken in accordance with  
8 the provisions of current law.

9 (d) Ninety days after the commencement of the  
10 mediation, and every 90 days thereafter, the action shall  
11 be reactivated unless the parties to the action do either  
12 of the following:

13 (1) Arrive at a settlement and implement it in  
14 accordance with the provisions of current law.

15 (2) Agree by written stipulation to extend the  
16 mediation for another 90-day period.

17 (e) Section 703.5 and Chapter 2 (commencing with  
18 Section 1115) of Division 9 of the Evidence Code apply to  
19 any mediation conducted pursuant to this chapter.

20 SEC. 9. Section 66033 of the Government Code is  
21 amended to read:

22 66033. (a) At the end of the mediation, the mediator  
23 shall file a report with the Office of Permit Assistance,  
24 consistent with Chapter 2 (commencing with Section  
25 1115) of Division 9 of the Evidence Code, containing each  
26 of the following:

27 (1) The title of the action.

28 (2) The names of the parties to the action.

29 (3) An estimate of the costs avoided, if any, because  
30 the parties used mediation instead of litigation to resolve  
31 their dispute.

32 (b) The sole purpose of the report required by this  
33 section is the collection of information needed by the  
34 office to prepare its report to the Legislature pursuant to  
35 Section 66036.

36 SEC. 10. Section 10089.80 of the Insurance Code is  
37 amended to read:

38 10089.80. (a) The representatives of the insurer shall  
39 know the facts of the case and be familiar with the  
40 allegations of the complainant. The insurer or the

1 insurer's representative shall produce at the settlement  
2 conference a copy of the policy and all documents from  
3 the claims file relevant to the degree of loss, value of the  
4 claim, and the fact or extent of damage.

5 The insured shall produce, to the extent available, all  
6 documents relevant to the degree of loss, value of the  
7 claim, and the fact or extent of damage.

8 The mediator may also order production of other  
9 documents that the mediator determines to be relevant  
10 to the issues under mediation. If a party declines to  
11 comply with that order, the mediator may appeal to the  
12 commissioner for a determination of whether the  
13 documents requested should be produced. The  
14 commissioner shall make a determination within 21 days.  
15 However, the party ordered to produce the documents  
16 shall not be required to produce while the issue is before  
17 the commissioner in this 21-day period. If the ruling is in  
18 favor of production, any insurer that is subject to an order  
19 to participate in mediation issued under subdivision (a)  
20 of Section 10089.75 shall comply with the order to  
21 produce. Insureds, and those insurers that are not subject  
22 to an order to participate in mediation, shall produce the  
23 documents or decline to participate further in the  
24 mediation after a ruling by the commissioner requiring  
25 the production of those other documents. Declination of  
26 mediation by the insurer under this section may be  
27 considered by the commissioner in exercising authority  
28 under subdivision (a) of Section 10089.75.

29 The mediator shall have the authority to protect from  
30 disclosure information that the mediator determines to  
31 be privileged, including, but not limited to, information  
32 protected by the attorney-client or work-product  
33 privileges, or to be otherwise confidential.

34 (b) The mediator shall determine prior to the  
35 mediation conference whether the insured will be  
36 represented by counsel at the mediation. The mediator  
37 shall inform the insurer whether the insured will be  
38 represented by counsel at the mediation conference. If  
39 the insured is represented by counsel at the mediation  
40 conference, the insurer's counsel may be present. If the

1 insured is not represented by counsel at the mediation  
2 conference, then no counsel may be present.

3 (c) Section 703.5 and Chapter 2 (commencing with  
4 Section 1115) of Division 9 of the Evidence Code apply to  
5 a mediation conducted under this chapter.

6 (d) The statements made by the parties, negotiations  
7 between the parties, and documents produced at the  
8 mediation are confidential. However, this confidentiality  
9 shall not restrict the access of the department to  
10 documents or other information the department seeks in  
11 order to evaluate the mediation program or to comply  
12 with reporting requirements. This subdivision does not  
13 affect the discoverability or admissibility of documents  
14 that are otherwise discoverable or admissible.

15 SEC. 11. Section 10089.82 of the Insurance Code is  
16 amended to read:

17 10089.82. (a) An insured may not be required to use  
18 the department's mediation process. An insurer may not  
19 be required to use the department's mediation process,  
20 except as provided in Section 10089.75.

21 (b) Neither the insurer nor the insured is required to  
22 accept an agreement proposed during the mediation.

23 (c) If the parties agree to a settlement agreement, the  
24 insured will have three business days to rescind the  
25 agreement. Notwithstanding Chapter 2 (commencing  
26 with Section 1115) of Division 9 of the Evidence Code, if  
27 the insured rescinds the agreement, it may not be  
28 admitted in evidence or disclosed unless the insured and  
29 all other parties to the agreement expressly agree to its  
30 disclosure. If the agreement is not rescinded by the  
31 insured, it is binding on the insured and the insurer, and  
32 acts as a release of all specific claims for damages known  
33 at the time of the mediation presented and agreed upon  
34 in the mediation conference. If counsel for the insured is  
35 present at the mediation conference and a settlement is  
36 agreed upon that is signed by the insured's counsel, the  
37 agreement is immediately binding on the insured and  
38 may not be rescinded.

1 (d) This section does not affect rights under existing  
2 law for claims for damage that were undetected at the  
3 time of the settlement conference.

4 (e) All settlements reached as a result of  
5 department-referred mediation shall address only those  
6 issues raised for the purpose of resolution. Settlements  
7 and any accompanying releases are not effective to settle  
8 or resolve any claim not addressed by the mediator for the  
9 purpose of resolution, nor any claim that the insured may  
10 have related to the insurer's conduct in handling the  
11 claim.

12 Referral to mediation or the pendency of a mediation  
13 under this article is not a basis to prevent or stay the filing  
14 of civil litigation arising in whole or in part out of the same  
15 facts. Any applicable statute of limitations is tolled for the  
16 number of days beginning from the referral to mediation  
17 until the date on which the mediation is either completed  
18 or declined, or the date on which the insured fails to  
19 appear for a scheduled mediation for the second time, or,  
20 in the event that a settlement is completed, the expiration  
21 of any applicable three business day cooling off period.

22 SEC. 12. Section 65 of the Labor Code is amended to  
23 read:

24 65. The department may investigate and mediate  
25 labor disputes providing any bona fide party to this type  
26 of dispute requests intervention by the department and  
27 the department may proffer its services to both parties  
28 when work stoppage is threatened and neither party  
29 requests intervention. In the interest of preventing labor  
30 disputes the department shall endeavor to promote  
31 sound union-employer relationships. The department  
32 may arbitrate or arrange for the selection of boards of  
33 arbitration on such terms as all of the bona fide parties to  
34 the dispute may agree upon. Any decision or award  
35 arising out of an arbitration conducted pursuant to this  
36 section is a public record. Section 703.5 and Chapter 2  
37 (commencing with Section 1115) of Division 9 of the  
38 Evidence Code apply to a mediation conducted by the  
39 California State Mediation and Conciliation Service, and  
40 any person conducting the mediation. All other records

1 of the department relating to labor disputes are  
2 confidential.

3 SEC. 13. Section 350 of the Welfare and Institutions  
4 Code is amended to read:

5 350. (a) (1) The judge of the juvenile court shall  
6 control all proceedings during the hearings with a view  
7 to the expeditious and effective ascertainment of the  
8 jurisdictional facts and the ascertainment of all  
9 information relative to the present condition and future  
10 welfare of the person upon whose behalf the petition is  
11 brought. Except where there is a contested issue of fact  
12 or law, the proceedings shall be conducted in an informal  
13 nonadversary atmosphere with a view to obtaining the  
14 maximum cooperation of the minor upon whose behalf  
15 the petition is brought and all persons interested in his or  
16 her welfare with any provisions that the court may make  
17 for the disposition and care of the minor.

18 (2) Each juvenile court is encouraged to develop a  
19 dependency mediation program to provide a  
20 problem-solving forum for all interested persons to  
21 develop a plan in the best interests of the child,  
22 emphasizing family preservation and strengthening. The  
23 Legislature finds that mediation of these matters assists  
24 the court in resolving conflict, and helps the court to  
25 intervene in a constructive manner in those cases where  
26 court intervention is necessary. Notwithstanding any  
27 other provision of law, no person, except the mediator,  
28 who is required to report suspected child abuse pursuant  
29 to the Child Abuse and Neglect Reporting Act (Article 2.5  
30 (commencing with Section 11164) of Chapter 2 of Title  
31 1 of Part 4 of the Penal Code), shall be exempted from  
32 those requirements under Chapter 2 (commencing with  
33 Section 1115) of Division 9 of the Evidence Code because  
34 he or she agreed to participate in a dependency  
35 mediation program established in the juvenile court.

36 If a dependency mediation program has been  
37 established in a juvenile court, and if mediation is  
38 requested by any person who the judge or referee deems  
39 to have a direct and legitimate interest in the particular  
40 case, or on the court's own motion, the matter may be set



1 for confidential mediation to develop a plan in the best  
2 interests of the child, utilizing resources within the family  
3 first and within the community if required.

4 (b) The testimony of a minor may be taken in  
5 chambers and outside the presence of the minor's parent  
6 or parents, if the minor's parent or parents are  
7 represented by counsel, the counsel is present and any of  
8 the following circumstances exist:

9 (1) The court determines that testimony in chambers  
10 is necessary to ensure truthful testimony.

11 (2) The minor is likely to be intimidated by a formal  
12 courtroom setting.

13 (3) The minor is afraid to testify in front of his or her  
14 parent or parents.

15 After testimony in chambers, the parent or parents of  
16 the minor may elect to have the court reporter read back  
17 the testimony or have the testimony summarized by  
18 counsel for the parent or parents.

19 The testimony of a minor also may be taken in  
20 chambers and outside the presence of the guardian or  
21 guardians of a minor under the circumstances specified  
22 in this subdivision.

23 (c) At any hearing in which the probation department  
24 bears the burden of proof, after the presentation of  
25 evidence on behalf of the probation department and the  
26 minor has been closed, the court, on motion of the minor,  
27 parent, or guardian, or on its own motion, shall order  
28 whatever action the law requires of it if the court, upon  
29 weighing all of the evidence then before it, finds that the  
30 burden of proof has not been met. That action includes,  
31 but is not limited to, the dismissal of the petition and  
32 release of the minor at a jurisdictional hearing, the return  
33 of the minor at an out-of-home review held prior to the  
34 permanency planning hearing, or the termination of  
35 jurisdiction at an in-home review. If the motion is not  
36 granted, the parent or guardian may offer evidence  
37 without first having reserved that right.