

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1997

Legislative Document

No. 1930

S.P. 695

In Senate, December 9, 1997

**An Act to Protect the Privacy of Alternative Dispute Resolution
Participants.**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 9, 1997. Referred to the Committee on Judiciary and ordered printed pursuant to Joint Rule 308.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LONGLEY of Waldo.

Cosponsored by Senators: CLEVELAND of Androscoggin, LAWRENCE of York.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 4 MRSA §18-C is enacted to read:

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§18-C. Disclosure of alternative dispute resolution communications

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1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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A. "Alternative dispute resolution" means the intervention by a person who is not a party to a dispute to provide assistance in solving the dispute. "Alternative dispute resolution" includes, but is not limited to, neutral case evaluation, mediation, arbitration, summary or private jury trials.

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B. "Alternative dispute resolution provider" means a person or group providing alternative dispute resolution that enters into a written agreement with the parties to assist in resolving a dispute or that is appointed or designated by a judicial, governmental or educational entity to assist in resolving a dispute.

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C. "Parties" include those persons participating in alternative dispute resolution who have a direct interest in the dispute.

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2. Limitation on disclosure. All communications made and acts occurring in connection with alternative dispute resolution and all memoranda, case files and other work product prepared are confidential and exempt from discovery and may not be disclosed, subpoenaed or admitted in evidence, except as provided in subsection 3.

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The obligation not to disclose applies to:

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A. A person participating in alternative dispute resolution, including:

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(1) The alternative dispute resolution service provider;

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(2) The parties and their counsel;

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(3) Interpreters;

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(4) All witnesses; and

2 (5) Any other person who attends or participates in
3 alternative dispute resolution, whether in person or by
4 other means;

5 B. A person receiving information about the alternative
6 dispute resolution through a relationship with or employment
7 by a corporation, partnership or other entity or person
8 participating in the alternative dispute resolution; and

9 C. A person receiving information about the alternative
10 dispute resolution by virtue of a supervisory, management,
11 training or peer consultation relationship with any person
12 participating in the alternative dispute resolution.

13 3. Exceptions to nondisclosure. The nondisclosure
14 provisions of subsection 2 do not apply in the following
15 situations.

16 A. If the alternative dispute resolution provider knows or
17 has reasonable cause to suspect that a child has been or is
18 likely to be abused or neglected, the alternative dispute
19 resolution provider may report or cause a report to be made
20 to the Department of Human Services.

21 B. If, during the alternative dispute resolution, a person
22 communicates a serious threat of physical violence against a
23 person, the alternative dispute resolution provider may make
24 reasonable efforts to warn, or notify law enforcement
25 personnel to warn, the threatened person. Acts of physical
26 violence committed during the alternative dispute resolution
27 may be reported immediately to appropriate authorities.

28 C. The alternative dispute resolution provider may disclose
29 information:

30 (1) To appropriate members of the staff in an
31 alternative dispute resolution program where such
32 disclosure is needed for supervision of the alternative
33 dispute resolution provider or management of the
34 alternative dispute resolution program; or

35 (2) For research, training, accreditation, peer
36 consultation or statistical compilation, as long as
37 reasonable steps are taken to protect the anonymity of
38 the participants.

39 D. Information may be disclosed if all parties to the
40 alternative dispute resolution agree in writing to the
41 disclosure.

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2 E. Information that indicates whether the dispute was
3 settled or not settled or whether the alternative dispute
4 resolution was unfinished or not held may be disclosed to a
5 court or other adjudicative body.

6 F. Settlement agreements that are not otherwise
7 confidential, signed by all the parties, may be submitted to
8 a court or other adjudicative body as evidence of the
9 resolution of the dispute.

10 G. Evidence relating solely to the liability of the
11 alternative dispute resolution provider may be disclosed in
12 any action against the alternative dispute resolution
13 provider.

14 4. Burden of proof. A person seeking to disclose or
15 require others to disclose information protected under subsection
16 2 has the burden of proving that disclosure is permitted.

17 5. Protection for good faith reporting. A person who
18 complies with the requirements of subsections 2 and 3 and who
19 participates in good faith in reporting under subsection 3 or in
20 a related investigation or proceeding is immune from criminal or
21 civil liability for the act of reporting or participating in the
22 investigation or proceeding.

23 This section does not affect the provisions of section 18-B,
24 subsection 3.

25 This section does not prevent the discovery or admissibility
26 of any information that would otherwise be subject to discovery
27 or admissible if the alternative dispute resolution had not
28 occurred.

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SUMMARY

31 This bill protects communications and acts that occur during
32 alternative dispute resolutions from disclosure in any subsequent
33 adjudication between the parties.
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