

1 AN ACT in relation to the certification of mediators

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Mediator Certification Act.

6 Section 5. Findings and intent.

7 (a) The General Assembly finds that mediation is a form  
8 of alternative dispute resolution with considerable potential  
9 for reducing the number of cases currently on the dockets of  
10 Illinois courts and administrative agencies and providing an  
11 economic saving to Illinois taxpayers in doing so.

12 (b) The General Assembly further finds that mediation is  
13 a process based upon the principle of self-determination by  
14 the parties inasmuch as it allows parties the freedom to  
15 determine the outcomes to their own disputes in ways that are  
16 very likely to satisfy all parties involved and have the  
17 highest likelihood of long-term success.

18 (c) The General Assembly further finds that the absence  
19 of uniform regulatory guidelines related to the practice of  
20 mediation has had or will have a deleterious effect on the  
21 practice of mediation in general and that uniform regulatory  
22 guidelines are in the best interest of the practitioners of,  
23 and the participants in, the mediation process.

24 (d) Finally, the General Assembly finds that the citizens  
25 of Illinois are best protected and assisted by the  
26 promulgation of guidelines establishing minimum training  
27 requirements, procedural rules, and ethical obligations for  
28 the practice of mediation.

29 Section 15. Construction; application of Act. This Act  
30 shall be liberally construed and applied to promote the

1 following purposes:

2 (1) ensuring that individuals who are referred to or  
3 seek mediation of civil matters in the State of Illinois  
4 as an alternative to fully litigating such claims have  
5 access to competent mediation service providers;

6 (2) ensuring that judges or others who seek to refer  
7 civil matters to mediation may do so with confidence  
8 that those who perform mediation services as certified  
9 mediators do so consistent with certain ethical rules and  
10 procedural guidelines;

11 (3) ensuring that individuals who seek mediator  
12 certification have uniform and clearly defined practice  
13 obligations and privileges that enhance the credibility  
14 of the profession and provide the basis for responding to  
15 mediator misconduct; and

16 (4) ensuring that the utilization of mediation as a  
17 method of dispute resolution in civil matters is promoted  
18 and provided in a uniform manner throughout the State of  
19 Illinois.

20 Section 20. Definitions. As used in this Act:

21 "Mediation" means a non-adjudicatory, non-binding, and  
22 cooperative process for privately resolving legal disputes  
23 with the assistance of a trained, neutral third-party whose  
24 role is to promote communication between parties to the  
25 dispute and to assist in the negotiation of the terms of  
26 resolution of that dispute. "Mediation" as defined herein is  
27 not the practice of law.

28 "Court-annexed mediation" means a mediation process  
29 provided by a judicial circuit consistent with local rules  
30 or the adoption of these rules to effectuate court-ordered  
31 mediation in the absence of local rules.

32 "Mediator" means one engaged in the practice of mediation  
33 regardless of whether the mediation is done for profit.

1 "Department" means the Department of Professional  
2 Regulation.

3 "Director" means the Director of Professional Regulation.

4 Section 25. Exemptions. This Act does not cover or  
5 pertain to the following activities:

6 (1) efforts by a sitting judge, magistrate, or  
7 hearing officer in his or her official, judicial capacity  
8 to mediate or facilitate the resolution of any matter,  
9 whether criminal or civil;

10 (2) direct negotiation between the parties to a  
11 dispute, whether through counsel or not, when a certified  
12 mediator is not a participant in said negotiation;

13 (3) other non-mediation alternative dispute  
14 resolution processes including, but not limited to,  
15 arbitration, the summary jury trial, and the mini-trial.

16 Section 30. Scope of application.

17 (a) This Act applies to the following:

18 (1) all persons wishing to use the designation  
19 "certified mediator" in the State of Illinois including,  
20 but not limited to, those practicing mediation as herein  
21 defined, privately or in court-annexed settings unless  
22 the term "certified" is permitted under local rule; and

23 (2) the provision of any process called or referred  
24 to as "mediation" as herein defined, and when performed  
25 by one using the title "certified mediator", used to  
26 resolve claims, whether such claims have been filed in a  
27 court of law or not and whether such service is provided  
28 privately or through a court-annexed entity;

29 (b) Nothing in this Act shall be construed as preventing  
30 or restricting the practice, services, or activities of any  
31 person licensed or registered in this State by any other law  
32 in the profession or occupation for which he or she is

1 licensed or registered.

2 (c) Nothing in this Act shall be construed as preventing  
3 or restricting the practice, services, or activities of any  
4 person pursuing a course of study leading to a degree or  
5 certificate in mediation at an accredited or approved program  
6 if such activities and services constitute a part of a course  
7 of study and if such person is designated by a title that  
8 clearly indicates his or her status as a student or trainee.

9 Section 35. Administration of certification.

10 (a) The Department of Professional Regulation shall  
11 exercise the powers and duties prescribed by the Civil  
12 Administrative Code of Illinois for the administration of  
13 certification and shall exercise such other powers and duties  
14 necessary for effectuating the purposes of this Act  
15 including, but not limited to, the obligation to maintain a  
16 continuously current and complete roster of certified  
17 mediators.

18 (b) The Director may promulgate rules consistent with the  
19 provisions of this Act for the administration and enforcement  
20 thereof, and for the payment of fees associated therewith,  
21 and may prescribe forms that shall be issued in connection  
22 therewith.

23 (c) The Department may at any time seek advice and expert  
24 knowledge on any matter relating to the administration of  
25 this Act.

26 Section 40. Mediator certification.

27 (a) To obtain certification as a mediator, a person must  
28 do all of the following:

29 (1) submit an application as designed by the  
30 Department of Professional Regulation, which shall  
31 require such information as in the judgment of the  
32 Department will enable the Department to pass on the

1 qualifications of the applicant for certification;

2 (2) complete a baccalaureate of arts or sciences  
3 degree at an accredited college or university;

4 (3) complete not fewer than 40 hours of specialized  
5 training in mediation as described in this Act; and

6 (4) adhere to the ethical obligations of the  
7 practice of mediation as described in this Act;

8 (b) A person who is currently practicing mediation on the  
9 effective date of this Act will be considered certified under  
10 this Act if he or she submits an application as described in  
11 this Section and pays the certification fee.

12 (c) A person certified by local circuit court rule on the  
13 effective date of this Act will be considered certified under  
14 this Act if he or she submits an application as described in  
15 this Section and pays the certification fee.

16 (d) The expiration date of certifications issued  
17 pursuant to this Act shall be 2 years from the date of issue  
18 and shall be renewed upon submission of the required fee and  
19 the completion of those duties described in Section 50 of  
20 this Act.

21 (e) A certified mediator who has permitted his or her  
22 certification to expire or who has had his or her  
23 certification placed on inactive status may have his or her  
24 certification restored by making application to the  
25 Department and filing proof acceptable to the Department of  
26 completion of the requirements of certification and  
27 continuing certification.

28 (f) In the event a formerly certified mediator has had  
29 his or her mediator certification revoked, that person may  
30 apply to the Department for recertification not sooner than 3  
31 years after revocation and consistent with procedures  
32 established by the Department.

33 Section 45. Mediation training.

1 (a) The training any individual seeking to use the  
2 designation "certified mediator" must complete shall provide  
3 instruction in all of the following:

4 (1) The nature and extent of the preparation and the  
5 general procedures engaged in by a mediator prior to the  
6 mediation conference.

7 (2) The general procedures normally followed in a  
8 mediation conference.

9 (3) The ethical obligations attendant to practice as  
10 a mediator.

11 (4) Negotiation skills sufficient to prepare the  
12 mediator to provide meaningful assistance to the parties  
13 in the course of the mediation conference including, but  
14 not limited to, identifying and managing power imbalances  
15 and refining and reconfiguring offers and counteroffers  
16 consistent with party interests and needs.

17 (5) Communication skills sufficient to prepare the  
18 mediator to provide meaningful assistance to the parties  
19 in the course of the mediation conference including, but  
20 not limited to, the ability to use clear, neutral  
21 language to frame facts and issues efficiently, to  
22 control the process without coercion, and to assist the  
23 parties to analyze suggested settlement options  
24 thoroughly and effectively.

25 (6) The Illinois judicial system and general rules  
26 of civil procedure. This portion of the training shall  
27 be conducted by a licensed Illinois attorney or certified  
28 mediator.

29 (7) Resources, both public and private, available to  
30 parties involved in a variety of civil disputes to which  
31 those parties may be referred for further assistance and  
32 support.

33 (b) The training any individual seeking to use the  
34 designation "certified mediator" must complete may be

1 provided by any of the following:

2 (1) a person certified as a mediator in the State of  
3 Illinois pursuant to this Act;

4 (2) an entity, for profit or not, delivering  
5 training through one or more certified mediators;

6 (3) a certified mediator at an accredited college or  
7 university at the undergraduate, graduate, post-graduate,  
8 or certificate level;

9 (4) a bar-related training program in Illinois;

10 (5) the National Judicial College; or

11 (6) such other entities as the Department may, from  
12 time to time, determine are suitable.

13 Section 50. Continuing training in mediation. A  
14 certified mediator has an obligation to maintain and refine  
15 his or her professional skills. To remain in good standing  
16 and be permitted to use the designation "certified mediator"  
17 in a continuing fashion, an individual must (i) certify  
18 completion of a minimum of 15 hours of advanced mediation or  
19 other related training or (ii) certify self-study or research  
20 leading to tangible professional accomplishment, for example  
21 to the publication of an article or paper within the field of  
22 mediation, during each 2-year period following initial  
23 certification under this Act.

24 Section 55. Obligations of the certified mediator prior  
25 to the mediation conference. Prior to commencing to mediate a  
26 matter, a certified mediator shall do all of the following:

27 (1) Inform the parties of the fees associated with  
28 mediation, if any.

29 (2) Advise the parties that the mediator does not,  
30 and cannot, represent either of the parties on this or  
31 any related matter.

32 (3) Advise the parties that the mediator does not,

1 and cannot, provide therapy or counseling to any party.

2 (4) Advise the parties that representation by legal  
3 counsel throughout the mediation process is encouraged  
4 and that parties are individually responsible for  
5 retaining counsel when and if they determine that counsel  
6 is necessary.

7 (5) Disclose any previous relationship, whether  
8 business or personal, with any party or attorney involved  
9 in the dispute subject to mediation.

10 (6) Define the process of mediation, including but  
11 not limited to the procedural steps undertaken in  
12 mediation and the privilege afforded the mediator in  
13 mediation.

14 (7) Be prepared to describe for the parties at their  
15 request all training and professional preparation  
16 undertaken by the mediator to achieve certification as a  
17 mediator.

18 Section 60. The mediation process.

19 (a) The mediation process provided by a certified  
20 mediator should consist, under normal circumstances, of the  
21 following procedures:

22 (1) A mediator opening statement. The mediator may  
23 provide a statement describing the process in which the  
24 parties will participate, including, but not limited to,  
25 (i) the role of the mediator, (ii) the obligations, if  
26 any, of the parties participating in the mediation  
27 conference, (iii) the procedural steps the mediator will  
28 follow in the mediation conference, and (iv) the level and  
29 nature of the confidentiality the parties are entitled to  
30 expect in the mediation process.

31 (2) The parties' opening statements. The parties or  
32 their attorneys may, at the request of the mediator,  
33 provide a summary of the dispute including, at the

1 parties' discretion, relevant facts, law, and suggested  
2 outcomes.

3 (3) The negotiation. The parties and their  
4 attorneys may exchange further information, including  
5 offers and counteroffers, in a good faith effort to  
6 resolve some or all of the issues outstanding in the  
7 dispute.

8 (4) Caucuses. The mediator may elect at any point  
9 in the mediation process to meet privately with each of  
10 the parties to discuss further, and with greater levels  
11 of disclosure, settlement of some or all of the issues  
12 outstanding in the dispute.

13 (5) A conclusion. The mediator may assist the  
14 parties in refining settlement options and reaching an  
15 agreement resolving some or all of the issues outstanding  
16 in the dispute.

17 (b) The mediator may assist in the creation of a written  
18 document reflecting the proposed settlement of the dispute  
19 subject to subsection (c) of Section 80.

20 (c) An agreement reached in mediation and signed by both  
21 parties at or following the mediation conference shall,  
22 unless otherwise agreed by the parties, be treated as an  
23 enforceable agreement under the laws of this State in the  
24 same manner as any other contract. Upon request of the  
25 parties, a court possessing jurisdiction over the dispute may  
26 create an order or decree incorporating the terms of a  
27 written agreement reached in mediation.

28 (d) With the exception of privileged communications, the  
29 rules of evidence do not apply to mediation; documentary  
30 evidence may be offered in the mediation conference, subject  
31 to the approval of the certified mediator, to support  
32 assertions made by parties therein.

33 (e) To the extent possible, parties participating in a  
34 mediation proceeding should endeavor to engage in discovery

1 cooperatively toward the development of information necessary  
2 to facilitate the mediation process. By agreement of the  
3 parties, discovery may be deferred completely during  
4 mediation.

5 Section 65. The mediation privilege.

6 (a) Communications made during a mediation conference  
7 shall be privileged and confidential.

8 (b) No subpoena for testimony or request for discovery,  
9 whether written or oral, made as a result of participation in  
10 or preparation for the mediation conference shall issue  
11 against a certified mediator without prior court order.

12 (c) The confidentiality privilege afforded the certified  
13 mediator in this Section may not be waived by the parties  
14 individually or in concert over the objection of the  
15 certified mediator.

16 (d) An objection to the obtaining of testimony or  
17 physical evidence from mediation may be made by any party or  
18 by the certified mediator.

19 (e) Any party seeking to obtain testimony or evidence  
20 from a certified mediator relating to a matter mediated by  
21 that certified mediator shall be responsible for all  
22 attorney's fees and costs associated with defending the  
23 mediator's assertion of the privilege described in this  
24 Section when that privilege is properly asserted by the  
25 certified mediator.

26 (f) Each party involved in the mediation conference has a  
27 privilege to refuse to disclose, and to prevent any person  
28 present at the mediation conference from disclosing  
29 communications made during the mediation conference except as  
30 stated in subsection (k) of this Section and in Section 75.

31 (g) All oral or written communications in a mediation  
32 conference, other than an executed settlement agreement or  
33 memorandum of agreement, shall be confidential and

1 inadmissible as evidence and not subject to discovery in any  
2 litigation, arbitration, or other proceeding including, but  
3 not limited to, subsequent adjudication of the matter in  
4 question.

5 (h) Evidence of conduct in the course of a mediation  
6 conference shall be confidential and inadmissible as evidence  
7 and not subject to discovery in any litigation, arbitration,  
8 or other proceeding including, but not limited to, subsequent  
9 adjudication of the matter in question.

10 (i) Mediation is a settlement negotiation and consistent  
11 with other rules, both State and federal regarding such  
12 proceedings, evidence of compromise or attempted compromise  
13 is not admissible or subject to discovery in any litigation,  
14 arbitration, or other proceeding including, but not limited,  
15 to subsequent adjudication of the matter in question.

16 (j) Nothing in this Section shall be construed to require  
17 the exclusion of evidence otherwise discoverable because it  
18 was presented in the course of a mediation conference.

19 (k) Nothing in this Section shall be construed to require  
20 the exclusion of evidence offered to demonstrate mediator  
21 misconduct or negligence in an action for civil damages  
22 against a mediator or an action seeking an administrative  
23 remedy against a mediator or to defend against such an  
24 action.

25 (l) Nothing in this Section shall be construed to prevent  
26 the disclosure of information revealed in a mediation  
27 conference to the extent it appears necessary to prevent a  
28 participant in the mediation conference from committing an  
29 act that would result in death or serious bodily harm.

30 (m) The use of attorney work product or disclosure of  
31 privileged communications during mediation shall not result  
32 in the waiver of the attorney work product or attorney/client  
33 privileges.

1           Section 70. Reporting abuse or neglect of children.  
2           Nothing in this Act shall be construed to prevent a mediator  
3           from reporting to the Department of Children and Family  
4           Services or other State or local law enforcement agency the  
5           mediator's suspicion or belief that a child has been injured,  
6           or may be in imminent threat of injury, as a result of  
7           physical, mental, or emotional abuse or neglect provided that  
8           the mediator has advised the parties in writing prior to the  
9           commencement of the mediation conference of the mediator's  
10          intention to make such a report in the event facts are  
11          revealed during the mediation conference leading to the  
12          suspicion or belief that abuse as described above has taken  
13          place. A mediator who does not advise the parties in writing  
14          prior to the commencement of the mediation conference of his  
15          or her intention to make such a report in the event facts are  
16          revealed during the mediation conference leading to the  
17          suspicion or belief that abuse as described above has taken  
18          place may not report that suspicion or belief in any way, and  
19          is specifically privileged relative to proceedings under the  
20          Juvenile Court Act of 1987 and the Abused and Neglected Child  
21          Reporting Act.

22          Section 75. Mediators also licensed to practice law.  
23          The practice of mediation as defined in this Act when  
24          performed by a non-attorney certified mediator shall not be  
25          considered the unauthorized practice of law provided the  
26          certified mediator does not give legal advice.

27          Section 80. Ethical obligations of the certified  
28          mediator.

29           (a) The ethical obligations under which a certified  
30          mediator may practice in another profession do not control  
31          the certified mediator when acting as a certified mediator.

32           (b) Certified mediators shall maintain an effective

1 system for identifying and avoiding conflicts of interest and  
2 the appearance of partiality. Specifically, certified  
3 mediators shall avoid the following situations that create  
4 the appearance of impropriety:

5 (1) A relationship with any company or individual  
6 the result of which would lead the reasonable person to  
7 believe the mediator cannot exercise independent and  
8 unbiased judgment.

9 (2) The certified mediator may not serve as a judge,  
10 administrative law judge, hearing officer, or magistrate  
11 in any matter in which the person served as a certified  
12 mediator.

13 (3) The certified mediator may not represent any  
14 party in the same or any related matter.

15 (4) The certified mediator also practicing in the  
16 behavioral sciences shall not mediate for an individual  
17 to whom counseling, therapy, or psychotherapy services  
18 have been rendered by that certified mediator.

19 (c) A certified mediator shall mediate only in those  
20 cases where the mediator possesses sufficient knowledge and  
21 expertise to be effective.

22 (d) A certified mediator shall, prior to and throughout  
23 the mediation conference, endeavor to assess the ability of  
24 all participants to negotiate in an informed and competent  
25 manner. The mediator shall terminate any mediation  
26 conference in which it is determined by the mediator that one  
27 or more participants does not have or has ceased to have the  
28 ability to negotiate in an informed and competent manner.

29 (e) A certified mediator shall recognize that mediation  
30 is based on the principle of self-determination by the  
31 parties. Self-determination is a fundamental principle of  
32 mediation. It requires that the mediation process rely upon  
33 the ability of the parties to reach a voluntary, uncoerced  
34 agreement. Unless otherwise provided under local court rule,

1 any party may withdraw from mediation at any time.

2 Section 85. Penalties. An individual who fails to  
3 comply with the provisions of this Act shall be subject to  
4 revocation of certification, either temporarily or  
5 permanently, and such other penalties as the Department may  
6 deem appropriate.

7 Section 90. Misrepresentation. Unless otherwise  
8 provided under local court rule, no person shall use the  
9 title of "certified mediator" or use or advertise any title  
10 or description that conveys the impression that the person is  
11 a certified mediator unless the person has been certified  
12 under this Act.

13 Section 95. Mediators trained in a state other than  
14 Illinois.

15 (a) Individuals who have completed training equivalent to  
16 that described in this Act in another state may apply for and  
17 shall be granted mediator certification in Illinois provided  
18 that the qualifications set forth in Section 40 of this Act  
19 are also met.

20 (b) All individuals certified to mediate in Illinois are  
21 subject to the provisions of this Act when mediating in  
22 Illinois whether trained, certified, licensed, or otherwise  
23 regulated in any other state.

24 (c) Certification or licensing in another state does not,  
25 through reciprocity, confer certified mediator status upon an  
26 individual.

27 Section 100. Fees. The following fees are imposed by  
28 this Act: (i) an initial, non-refundable \$100 application fee  
29 and (ii) a bi-annual, non-refundable renewal of certification  
30 fee not to exceed \$50.

1           Section 950. The Regulatory Sunset Act is amended by  
2 adding Section 4.22 as follows:

3           (5 ILCS 80/4.22 new)

4           Sec. 4.22. Act repealed on January 1, 2012. The  
5 following Act is repealed on January 1, 2012:

6           The Mediator Certification Act.