

HOUSE BILL No. 1587

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-57-5.

Synopsis: Pre-suit mediation. Defines "pre-suit mediation" as mediation conducted: (1) between at least two parties to a civil dispute that is not the subject of a suit filed in a state court or federal court that has primary jurisdiction; and (2) by an individual who is registered as a civil mediator with the Indiana supreme court. Allows the parties to a pre-suit mediation to select a mediator by mutual agreement. Establishes a procedure for the parties to select a mediator if the parties are not able to agree on a mediator. Specifies that: (1) pre-suit mediation sessions must be closed to all persons except the parties and the mediator; (2) communications between the parties to a pre-suit mediation are considered confidential; and (3) a mediator may not
(Continued next page)

Effective: July 1, 1999.

Foley

January 21, 1999, read first time and referred to Committee on Judiciary.

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Digest Continued

disclose any information concerning a pre-suit mediation. Provides that a mediator who conducts a pre-suit mediation: (1) is immune from liability in the same manner and to the same extent as the judge of a trial court; and (2) may not be called to testify in a judicial or an administrative proceeding concerning communications made during a pre-suit mediation.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1587

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-78 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 78. (a) "Mediation", for
3 purposes of IC 34-57-3, means a process where at least two (2)
4 disputing parties choose to be guided to a mutually agreeable solution
5 with the aid of a mediator.

6 (b) "**Mediation**", for purposes of section 113.3 of this chapter,
7 means a method of alternative dispute resolution where at least two
8 (2) parties engage in settlement negotiations with the aid of a
9 mediator who:

- 10 (1) does not act as a trier of fact or a decision maker; and
11 (2) facilitates the negotiations between the parties.

12 SECTION 2. IC 34-6-2-79 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 79. (a) "Mediator", for
14 purposes of IC 34-57-3, means a neutral and impartial person who
15 assists in the resolution of a dispute through the mediation process.

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IN 1587—LS 7470/DI 69+



1 (b) "Mediator", for purposes of section 78(b) of this chapter and
 2 IC 34-57-5, means an individual who is registered as a civil
 3 mediator with the Indiana supreme court as provided in Rule 2.5
 4 of the Indiana Supreme Court Rules for Alternative Dispute
 5 Resolution.

6 SECTION 3. IC 34-6-2-113.3 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 1999]: Sec. 113.3. "Pre-suit mediation", for
 9 purposes of IC 34-57-5, means mediation conducted between at
 10 least two (2) parties to a civil dispute that is not the subject of a suit
 11 filed in:

- 12 (1) a state court; or
 13 (2) a federal court;
 14 that has primary jurisdiction.

15 SECTION 4. IC 34-57-5 IS ADDED TO THE INDIANA CODE AS
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 1999]:

18 **Chapter 5. Pre-suit Mediation**

19 **Sec. 1. (a)** The parties to a pre-suit mediation may select a
 20 mediator by mutual agreement.

21 **(b)** If the parties to a pre-suit mediation are not able to select a
 22 mediator under subsection (a):

- 23 (1) the parties shall request the Indiana supreme court
 24 administrator to provide the parties with a list of three (3)
 25 registered civil mediators;
 26 (2) the parties shall designate one (1) party to strike the name
 27 of one (1) mediator from the list;
 28 (3) one (1) of the other parties shall strike the name of a
 29 second mediator from the list; and
 30 (4) the remaining mediator on the list shall serve as the
 31 mediator for the parties in the pre-suit mediation.

32 **Sec. 2. (a)** A pre-suit mediation session must be closed to all
 33 persons except:

- 34 (1) the parties to the pre-suit mediation; and
 35 (2) the mediator.

36 **(b)** A statement, an offer of settlement, or any other
 37 communication between the parties to a pre-suit mediation:

- 38 (1) is considered confidential; and
 39 (2) may not be disclosed outside of a pre-suit mediation
 40 session.

41 A party to a pre-suit mediation may not waive the confidentiality
 42 provided in this subsection.



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1 (c) A mediator may not disclose any information concerning a
2 pre-suit mediation.
3 Sec. 3. (a) A mediator who conducts a pre-suit mediation is
4 immune from liability in the same manner and to the same extent
5 as the judge of a trial court.
6 (b) A mediator may not be called to testify in a judicial or an
7 administrative proceeding concerning:
8 (1) statements;
9 (2) agreements; or
10 (3) other communication;
11 made during a pre-suit mediation.

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