

The Connecticut Trial Lawyers Association respectfully urges you to reject Raised Bill NO. 598, entitled “*AN ACT ADOPTING THE CONNECTICUT UNIFORM MEDIATION ACT.*”

CTLA urges the rejection of this bill for two principal reasons:

1. Since the bill is a “Model Act”, it is a one size fits all solution that fails to take Connecticut law and practice into account;
2. The bill addresses a problem that does not exist; and
3. The bill creates privileges that are both unnecessary and unwise.

1. Effect on Connecticut Practice

The bill’s proponents argue that this bill is necessary in order to clarify the rules of confidentiality associated with private mediations. CTLA submits that this issue does not require a legislative solution, as current law sufficiently deals with judicial mediations, whereas private mediations are often governed by contracts between the parties.

Moreover, even insofar as the bill purports to attempt to make the rules of confidentiality uniform, the bill fails. The bill expressly exempts mediations with a judge who “might make a ruling on the case.” Since this standard would exclude any Superior Court Judge, as any one “might” rule on issues in the case. As such, the statute will not streamline Connecticut practice; rather it will leave Connecticut with 3 different rules of confidentiality:

1. Private mediations will have the broad confidentiality provided in the Statute;
2. Court ordered mediation will be left to the common law and Court rules; and
3. Non-court ordered mediation will be governed by 52-235d.

2. Confidentiality rules

One of the bill’s provisions provides “nonparty” participants with the ability to prevent the disclosure of his or her communications during a mediation in subsequent legal actions. This provision could cause great harm and greatly expands Connecticut common law. For example, this provision could prevent a defendant from testifying against his own insurance company, who acted in bad faith at a mediation, during a subsequent bad faith action. In other words, A sues B, who insured by XYZ Insurance Company. B wants the case settled, but XYZ refuses to negotiate and makes statements at the mediation that are in bad faith. In this way, the bill could hinder the utility of mediations.

For both of these reasons, this bill constitutes an unwise and unneeded bill and CTLA urges its rejection.