

--H.R.3528--

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*One Hundred Fifth Congress*

*of the*

*United States of America*

*AT THE SECOND SESSION*

Begun and held at the City of Washington on Tuesday,  
the twenty-seventh day of January, one thousand nine hundred and ninety-eight

An Act

To amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SECTION 1. SHORT TITLE.**

This Act may be cited as the `Alternative Dispute Resolution Act of 1998'.

## **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

Congress finds that--

- (1) alternative dispute resolution, when supported by the bench and bar, and utilizing properly trained neutrals in a program adequately administered by the court, has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements;
- (2) certain forms of alternative dispute resolution, including mediation, early neutral evaluation, minitrials, and voluntary arbitration, may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently; and
- (3) the continued growth of Federal appellate court-annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts; therefore, the district courts should consider including mediation in their local alternative dispute resolution programs.

## **SEC. 3. ALTERNATIVE DISPUTE RESOLUTION PROCESSES TO BE AUTHORIZED IN ALL DISTRICT COURTS.**

Section 651 of title 28, United States Code, is amended to read as follows:

## **`Sec. 651. Authorization of alternative dispute resolution**

`(a) DEFINITION- For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

`(b) AUTHORITY- Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

`(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS- In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

`(d) ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS- Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

`(e) TITLE 9 NOT AFFECTED- This chapter shall not affect title 9, United States Code.

`(f) PROGRAM SUPPORT- The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.'

## **SEC. 4. JURISDICTION.**

Section 652 of title 28, United States Code, is amended to read as follows:

### **`Sec. 652. Jurisdiction**

`(a) CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES- Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do

so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

`(b) ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION- Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

`(c) AUTHORITY OF THE ATTORNEY GENERAL- Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

`(d) CONFIDENTIALITY PROVISIONS- Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.'

## **SEC. 5. MEDIATORS AND NEUTRAL EVALUATORS.**

Section 653 of title 28, United States Code, is amended to read as follows:

### **`Sec. 653. Neutrals**

`(a) PANEL OF NEUTRALS- Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

`(b) QUALIFICATIONS AND TRAINING- Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).'

## **SEC. 6. ACTIONS REFERRED TO ARBITRATION.**

Section 654 of title 28, United States Code, is amended to read as follows:

### **`Sec. 654. Arbitration**

`(a) REFERRAL OF ACTIONS TO ARBITRATION- Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection

(d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where--

`(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

`(2) jurisdiction is based in whole or in part on section 1343 of this title; or

`(3) the relief sought consists of money damages in an amount greater than \$150,000.

`(b) SAFEGUARDS IN CONSENT CASES- Until such time as rules are adopted under chapter 131 of this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)--

`(1) consent to arbitration is freely and knowingly obtained; and

`(2) no party or attorney is prejudiced for refusing to participate in arbitration.

`(c) PRESUMPTIONS- For purposes of subsection (a)(3), a district court may presume damages are not in excess of \$150,000 unless counsel certifies that damages exceed such amount.

`(d) EXISTING PROGRAMS- Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section title IX of the Judicial Improvements and Access to Justice Act (Public Law 100-702), as amended by section 1 of Public Law 105-53.'.

## **SEC. 7. ARBITRATORS.**

Section 655 of title 28, United States Code, is amended to read as follows:

### **`Sec. 655. Arbitrators**

`(a) POWERS OF ARBITRATORS- An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration--

`(1) to conduct arbitration hearings;

`(2) to administer oaths and affirmations; and

`(3) to make awards.

`(b) STANDARDS FOR CERTIFICATION- Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator--

`(1) shall take the oath or affirmation described in section 453; and

`(2) shall be subject to the disqualification rules under section 455.

`(c) IMMUNITY- All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.'.

## **SEC. 8. SUBPOENAS.**

Section 656 of title 28, United States Code, is amended to read as follows:

### **`Sec. 656. Subpoenas**

`Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.'

## **SEC. 9. ARBITRATION AWARD AND JUDGMENT.**

Section 657 of title 28, United States Code, is amended to read as follows:

### **`Sec. 657. Arbitration award and judgment**

`(a) **FILING AND EFFECT OF ARBITRATION AWARD-** An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

`(b) **SEALING OF ARBITRATION AWARD-** The district court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

`(c) **TRIAL DE NOVO OF ARBITRATION AWARDS-**

`(1) **TIME FOR FILING DEMAND-** Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

`(2) **ACTION RESTORED TO COURT DOCKET-** Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

`(3) **EXCLUSION OF EVIDENCE OF ARBITRATION-** The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless--

`(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

`(B) the parties have otherwise stipulated.'

## **SEC. 10. COMPENSATION OF ARBITRATORS AND NEUTRALS.**

Section 658 of title 28, United States Code, is amended to read as follows:

### **`Sec. 658. Compensation of arbitrators and neutrals**

`(a) COMPENSATION- The district court shall, subject to regulations approved by the Judicial Conference of the United States, establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

`(b) TRANSPORTATION ALLOWANCES- Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.'

## **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.

## **SEC. 12. CONFORMING AMENDMENTS.**

(a) LIMITATION ON MONEY DAMAGES- Section 901 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 652 note), is amended by striking subsection (c).

(b) OTHER CONFORMING AMENDMENTS- (1) The chapter heading for chapter 44 of title 28, United States Code, is amended to read as follows:

### **`CHAPTER 44--ALTERNATIVE DISPUTE RESOLUTION'.**

(2) The table of contents for chapter 44 of title 28, United States Code, is amended to read as follows:

`Sec.

`651. Authorization of alternative dispute resolution.

`652. Jurisdiction.

`653. Neutrals.

`654. Arbitration.

`655. Arbitrators.

`656. Subpoenas.

`657. Arbitration award and judgment.

`658. Compensation of arbitrators and neutrals.'

(3) The item relating to chapter 44 in the table of chapters for Part III of title 28, United States Code, is amended to read as follows:

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.