

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representatives Blair, M. Wilson, and Shaver**

A Bill

HOUSE BILL 1238

For An Act To Be Entitled

8 "AN ACT TO ENCOURAGE THE USE OF DISPUTE RESOLUTION
9 PROCESSES IN THE STATE OF ARKANSAS; AND FOR OTHER
10 PURPOSES."

Subtitle

13 "AN ACT TO ENCOURAGE THE USE OF DISPUTE RESOLUTION
14 PROCESSES."

16 WHEREAS, formal judicial process can on occasion be disproportionately
17 time consuming and costly for adequate resolution of certain kinds of disputes
18 which arise in this state; and

19 WHEREAS, the cumulative burden of disputes for which formal judicial
20 proceedings are inadequate can be substantial; and

21 WHEREAS, the ensuing frustrations springing from unresolved disputes vex
22 our citizens, and neglected disputes have the potential for escalating into
23 more serious social consequences; and

24 WHEREAS, the various forms of dispute resolution processes can increase
25 access of the public to enhanced dispute resolution opportunities, and thereby
26 amplify public regard and usage of the legal system and reduce the volume of
27 matters which encumber the court system of this state.

29 THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31 SECTION 1. Legislative purpose and intent. It is the intent of the
32 General Assembly to:

33 (1) encourage and authorize the use of dispute resolution processes
34 throughout this state to resolve disputes, cases, and controversies of all
35 kinds. Such processes include, but are not limited to, negotiation,

1 mediation, conciliation, arbitration, private judging, moderated settlement
2 conference, med-arb, fact finding, mini-trial, and summary jury trial;

3 (2) encourage the development of new and the improvement of existing
4 processes in this state;

5 (3) encourage the courts, officers and employees of the courts of this
6 state, state and local officers, departments, state and local governments and
7 administrative agencies, state and local enforcement officers and agencies,
8 prosecuting authorities and public defenders and all other state and local
9 officials, agencies, districts and authorities to become versed in, accept,
10 use, develop, and improve processes appropriate to the fair, just, and
11 efficient resolution of disputes, cases, and controversies of all kinds in
12 this state.

13

14 SECTION 2. Duty and authority of the courts. It is the duty of all
15 trial and appellate courts of this state, and they are hereby vested with the
16 authority, to encourage the settlement of cases and controversies pending
17 before them by advising the reference thereof to an appropriate dispute
18 resolution process agreeable to the parties, and on motion of all the parties,
19 must make such an order of reference and continue the case or controversy
20 pending the outcome of the selected dispute resolution process. All courts
21 are further granted the discretionary authority to make, at the request of a
22 party, appropriate orders to confirm and enforce the results produced by such
23 dispute resolution process.

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25 SECTION 3. Duty and authority of state and local officers and agencies
26 and governments. It is the duty of all the elements of government expressed
27 or implied by Section 1 (3) above, and they are hereby authorized, to use
28 dispute resolution processes in resolving any and all disputes, cases or
29 controversies in which they may be directly or indirectly involved, whether
30 between themselves and members of the public or between any other state or
31 local officer, agency, government, or entity of this state or of any other
32 state or any element or entity of the federal government.

33

34 SECTION 4. Counselling by attorneys. All attorneys licensed in this
35 state when practicing in this state are *encouraged* to advise their clients

1 about the dispute resolution process options available to them and assist them
2 in the selection of the technique or procedure (including litigation) deemed
3 appropriate for dealing with the client_s dispute, case, or controversy.

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5 SECTION 5. Duty to keep records of dispute resolution efforts and to
6 file annual reports.

7 The courts and all the other elements of government expressed or implied
8 by Section 1 (3) above may keep information concerning all their efforts to
9 use dispute resolution processes, whether or not such efforts led to a
10 successful outcome.

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12 SECTION 6. Confidentiality of communications in dispute resolution
13 procedures.

14 (a) Except as provided by subsection (c) of this section, a
15 communication relating to the subject matter of any civil or criminal dispute
16 made by a participant in a dispute resolution process, whether before or after
17 the institution of formal judicial proceedings, is confidential, and is not
18 subject to disclosure and may not be used as evidence against a participant in
19 any judicial or administrative proceeding.

20 (b) Any record or writing made at a dispute resolution process is
21 confidential, and the participants or third party or parties facilitating the
22 process shall not be required to testify in any proceedings related to or
23 arising out of the matter in dispute or be subject to process requiring
24 disclosure or production of information or data relating to or arising out of
25 the matter in dispute.

26 (c) If this section conflicts with other legal requirements for
27 disclosure of communications or materials, the issue of confidentiality may be
28 presented to the court having jurisdiction of the proceedings to determine, in
29 camera, whether the facts, circumstances, and context of the communications or
30 materials sought to be disclosed warrant a protective order of the court or
31 whether the communications or materials are subject to disclosure.

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33 SECTION 7. Immunity of impartial third parties. No impartial third
34 party administering or participating in a dispute resolution process shall be
35 held liable for civil damages for any statement or decision made in connection

1 with or arising out of the conduct of a dispute resolution process unless such
2 person acted in a manner exhibiting willful or wanton misconduct.

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4 SECTION 8. All provisions of this act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

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8 SECTION 9. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

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14 SECTION 10. All laws and parts of laws in conflict with this act are
15 hereby repealed.

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/s/Buddy Blair, et al

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As Engrossed: 2/5/93 3/16/93

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