

1 State of Arkansas
2 79th General Assembly
3 Regular Session, 1993

A Bill

SENATE BILL

4 By: Senators Harriman and Malone

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For An Act To Be Entitled

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

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Subtitle

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

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

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

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

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

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

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

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*(1) encourage and authorize the use of dispute resolution processes throughout this state to resolve disputes, cases, and controversies of
27 all kinds. Such processes include, but are not limited to, negotiation, mediation, conciliation, arbitration, private judging, moderated
28 settlement conference, med-arb, fact finding, mini-trial, and summary jury trial;*

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

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*(3) encourage the courts, officers and employees of the courts of this state, state and local officers, departments, state and local
31 governments and administrative agencies, state and local enforcement officers and agencies, prosecuting authorities and public defenders and all
32 other state and local officials, agencies, districts and authorities to become versed in, accept, use, develop, and improve processes appropriate to
33 the fair, just, and efficient resolution of disputes, cases, and controversies of all kinds in this state.*

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SECTION 2. Duty and authority of the courts. It is the duty of all trial and appellate courts of this state, and they are hereby

1 vested with the authority, to encourage the settlement of cases and controversies pending before them by advising the reference thereof to an
2 appropriate dispute resolution process agreeable to the parties, and on motion of all the parties, must make such an order of reference and
3 continue the case or controversy pending the outcome of the selected dispute resolution process. All courts are further granted the discretionary
4 authority to make, at the request of a party, appropriate orders to confirm and enforce the results produced by such dispute resolution process.

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

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12 *SECTION 4. Counselling by attorneys. All attorneys licensed in this state when practicing in this state should advise their*
13 *clients about the dispute resolution process options available to them and assist them in the selection of the technique or procedure (including*
14 *litigation) deemed appropriate for dealing with the client's dispute, case, or controversy.*

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

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

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20 *SECTION 6. Confidentiality of communications in dispute resolution procedures.*

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

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

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

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32 *SECTION 7. Immunity of impartial third parties. No impartial third party administering or participating in a dispute*
33 *resolution process shall be held liable for civil damages for any statement or decision made in connection with or arising out of the conduct of a*
34 *dispute resolution process unless such person acted in a manner exhibiting willful or wanton misconduct.*

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

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

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

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