

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

# **A Bill**

**ACT 641 OF 1993**  
**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,  
36 mediation, conciliation, arbitration, private judging, moderated settlement

1 conference, med-arb, fact finding, mini-trial, and summary jury trial;

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

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

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

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

32

33 SECTION 4. Counselling by attorneys. All attorneys licensed in this  
34 state when practicing in this state are *encouraged* to advise their clients  
35 about the dispute resolution process options available to them and assist them

1 in the selection of the technique or procedure (including litigation) deemed  
2 appropriate for dealing with the client\_s dispute, case, or controversy.

3

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

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

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

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

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

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

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

1 person acted in a manner exhibiting willful or wanton misconduct.

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

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

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

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*/s/Buddy Blair, et al*

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APPROVED: 3/23/93

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

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