

105TH CONGRESS
2^D SESSION

H. R. 3528

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1998

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alternative Dispute
5 Resolution Act of 1998”.

1 **SEC. 2. ALTERNATIVE DISPUTE RESOLUTION PROCESSES**
2 **TO BE AUTHORIZED IN ALL DISTRICT**
3 **COURTS.**

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

6 **“§ 651. Authorization of alternative dispute resolu-**
7 **tion**

8 “(a) DEFINITION.—For purposes of this chapter, an
9 alternative dispute resolution process includes any process
10 or procedure, other than an adjudication by a presiding
11 judge, in which a neutral third party participates to assist
12 in the resolution of issues in controversy, through proc-
13 esses such as early neutral evaluation, mediation, mini-
14 trial, and arbitration as provided in sections 654 through
15 658.

16 “(b) AUTHORITY.—Each United States district court
17 shall authorize, by local rule, the use of alternative dispute
18 resolution processes in all civil actions, including adversary
19 proceedings in bankruptcy, in accordance with this chap-
20 ter, except that the use of arbitration may be authorized
21 only as provided in section 654. Each United States dis-
22 trict court shall devise and implement its own alternative
23 dispute resolution program by local rule to encourage and
24 promote the use of alternative dispute resolution in its dis-
25 trict.

1 “(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION
2 PROGRAMS.—In those courts where an alternative dispute
3 resolution program is in place on the date of the enact-
4 ment of the Alternative Dispute Resolution Act of 1998,
5 the court shall examine the effectiveness of that program
6 and adopt such improvements to the program as are con-
7 sistent with the provisions and purposes of this chapter.

8 “(d) ADMINISTRATION OF ALTERNATIVE DISPUTE
9 RESOLUTION PROGRAMS.—Each United States district
10 court shall retain or designate an existing employee knowl-
11 edgeable in alternative dispute resolution practices and
12 processes to implement, administer, oversee, and evaluate
13 the court’s alternative dispute resolution program. Such
14 person may also be responsible for recruiting, screening,
15 and training attorneys to serve as neutrals and arbitrators
16 in the court’s alternative dispute resolution program.

17 “(e) TITLE 9 NOT AFFECTED.—This chapter shall
18 not affect title 9.

19 “(f) PROGRAM SUPPORT.—The Federal Judicial Cen-
20 ter and the Administrative Office of the United States
21 Courts are authorized to assist the district courts in the
22 establishment and improvement of alternative dispute res-
23 olution programs by identifying particular practices em-
24 ployed in successful programs and providing additional as-
25 sistance as needed and appropriate.”.

1 **SEC. 3. JURISDICTION.**

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

4 **“§ 652. Jurisdiction**

5 “(a) CONSIDERATION OF ALTERNATIVE DISPUTE
6 RESOLUTION IN APPROPRIATE CASES.—Notwithstanding
7 any provision of law to the contrary and except as pro-
8 vided in subsections (b) and (c), each district court shall,
9 by local rule, require that litigants in all civil cases con-
10 sider the use of an alternative dispute resolution process
11 at an appropriate stage in the litigation. Each district
12 court shall provide litigants in all civil cases with a choice
13 of alternative dispute resolution processes, including, but
14 not limited to, mediation, early neutral evaluation, mini-
15 trial, and arbitration as authorized in sections 654
16 through 658. Any district court that elects to require the
17 use of alternative dispute resolution in certain cases may
18 do so only with respect to mediation, early neutral evalua-
19 tion, and arbitration.

20 “(b) ACTIONS EXEMPTED FROM CONSIDERATION OF
21 ALTERNATIVE DISPUTE RESOLUTION.—Each district
22 court may exempt from the requirements of this section
23 specific cases or categories of cases in which use of alter-
24 native dispute resolution would not be appropriate. In de-
25 fining these exemptions, each district court shall consult

1 with members of the bar, including the United States At-
2 torney for that district.

3 “(c) **AUTHORITY OF THE ATTORNEY GENERAL.**—
4 Nothing in this section shall alter or conflict with the au-
5 thority of the Attorney General to conduct litigation on
6 behalf of the United States, with the authority of any Fed-
7 eral agency authorized to conduct litigation in the United
8 States courts, or with any delegation of litigation authority
9 by the Attorney General.

10 “(d) **CONFIDENTIALITY PROVISIONS.**—Until such
11 time as rules are adopted pursuant to chapter 131 of this
12 title providing for the confidentiality of alternative dispute
13 resolution processes under this chapter, each district court
14 shall by local rule provide for the confidentiality of the
15 alternative dispute resolution processes and to prohibit
16 disclosure of confidential dispute resolution communica-
17 tions.”.

18 **SEC. 4. MEDIATORS AND NEUTRAL EVALUATORS.**

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

21 **“§ 653. Neutrals**

22 “(a) **PANEL OF NEUTRALS.**—Each district court that
23 authorizes the use of alternative dispute resolution pro-
24 cesses shall maintain a panel of neutrals available for use
25 by the parties for each category of process offered. Each

1 district court shall promulgate its own procedures and cri-
2 teria for the selection of neutrals on its panels.

3 “(b) **QUALIFICATIONS AND TRAINING.**—Each person
4 serving as a neutral in an alternative dispute resolution
5 process should be qualified and trained to serve as a neu-
6 tral in the appropriate alternative dispute resolution proc-
7 ess. For this purpose, the district court may use, among
8 others, magistrate judges who have been trained to serve
9 as neutrals in alternative dispute resolution processes, pro-
10 fessional neutrals from the private sector, and persons who
11 have been trained to serve as neutrals in alternative dis-
12 pute resolution processes. Until such time as rules are
13 adopted pursuant to chapter 131 of this title relating to
14 the disqualification of neutrals, each district court shall
15 issue rules relating to the disqualification of neutrals (in-
16 cluding, where appropriate, disqualification under section
17 455 of this title, other applicable law, and professional re-
18 sponsibility standards).”.

19 **SEC. 5. ACTIONS REFERRED TO ARBITRATION.**

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

22 **“§ 654. Arbitration**

23 “(a) **REFERRAL OF ACTIONS TO ARBITRATION.**—
24 Notwithstanding any provision of law to the contrary and
25 except as provided in subsections (b) and (c) of section

1 652 and subsection (d) of this section, a district court may
2 allow the referral to arbitration of any civil action (includ-
3 ing any adversary proceeding in bankruptcy) pending be-
4 fore it, except that referral to arbitration may not be made
5 where—

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

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

11 “(3) the relief sought consists of money dam-
12 ages in an amount greater than \$150,000.

13 “(b) SAFEGUARDS IN CONSENT CASES.—Until such
14 time as rules are adopted pursuant to chapter 131 of this
15 title relating to procedures described in this subsection,
16 the district court shall by local rule establish procedures
17 to ensure that any civil action in which arbitration by con-
18 sent is allowed under subsection (a)—

19 “(1) consent to arbitration is freely and know-
20 ingly obtained; and

21 “(2) no party or attorney is prejudiced for re-
22 fusing to participate in arbitration.

23 “(c) PRESUMPTIONS.—For purposes of subsection
24 (a)(3), a district court may presume damages are not in

1 excess of \$150,000 unless counsel certifies that damages
2 exceed such amount.

3 “(d) EXISTING PROGRAMS.—Nothing in this section
4 is deemed to affect any action in which arbitration is con-
5 ducted pursuant to section 906 of the Judicial Improve-
6 ments and Access to Justice Act (Public Law 100–102),
7 as in effect prior to the date of its repeal.”.

8 **SEC. 6. ARBITRATORS.**

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

11 **“§ 655. Arbitrators**

12 “(a) POWERS OF ARBITRATORS.—An arbitrator to
13 whom an action is referred under section 654 shall have
14 the power, within the judicial district of the district court
15 which referred the action to arbitration—

16 “(1) to conduct arbitration hearings;

17 “(2) to administer oaths and affirmations; and

18 “(3) to make awards.

19 “(b) STANDARDS FOR CERTIFICATION.—Each dis-
20 trict court that authorizes arbitration shall establish
21 standards for the certification of arbitrators and shall cer-
22 tify arbitrators to perform services in accordance with
23 such standards and this chapter. The standards shall in-
24 clude provisions requiring that any arbitrator—

1 “(1) shall take the oath or affirmation de-
2 scribed in section 453; and

3 “(2) shall be subject to the disqualification
4 rules under section 455.

5 “(c) IMMUNITY.—All individuals serving as arbitra-
6 tors in an alternative dispute resolution program under
7 this chapter are performing quasi-judicial functions and
8 are entitled to the immunities and protections that the law
9 accords to persons serving in such capacity.”.

10 **SEC. 7. SUBPOENAS.**

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

13 **“§ 656. Subpoenas**

14 “Rule 45 of the Federal Rules of Civil Procedure (re-
15 lating to subpoenas) applies to subpoenas for the attend-
16 ance of witnesses and the production of documentary evi-
17 dence at an arbitration hearing under this chapter.”.

18 **SEC. 8. ARBITRATION AWARD AND JUDGMENT.**

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

21 **“§ 657. Arbitration award and judgment**

22 “(a) FILING AND EFFECT OF ARBITRATION
23 AWARD.—An arbitration award made by an arbitrator
24 under this chapter, along with proof of service of such
25 award on the other party by the prevailing party or by

1 the plaintiff, shall be filed promptly after the arbitration
2 hearing is concluded with the clerk of the district court
3 that referred the case to arbitration. Such award shall be
4 entered as the judgment of the court after the time has
5 expired for requesting a trial de novo. The judgment so
6 entered shall be subject to the same provisions of law and
7 shall have the same force and effect as a judgment of the
8 court in a civil action, except that the judgment shall not
9 be subject to review in any other court by appeal or other-
10 wise.

11 “(b) SEALING OF ARBITRATION AWARD.—The dis-
12 trict court shall provide by local rule that the contents of
13 any arbitration award made under this chapter shall not
14 be made known to any judge who might be assigned to
15 the case until the district court has entered final judgment
16 in the action or the action has otherwise terminated.

17 “(c) TRIAL DE NOVO OF ARBITRATION AWARDS.—

18 “(1) TIME FOR FILING DEMAND.—Within 30
19 days after the filing of an arbitration award with a
20 district court under subsection (a), any party may
21 file a written demand for a trial de novo in the dis-
22 trict court.

23 “(2) ACTION RESTORED TO COURT DOCKET.—

24 Upon a demand for a trial de novo, the action shall
25 be restored to the docket of the court and treated

1 for all purposes as if it had not been referred to ar-
2 bitration.

3 “(3) EXCLUSION OF EVIDENCE OF ARBITRA-
4 TION.—The court shall not admit at the trial de
5 novo any evidence that there has been an arbitration
6 proceeding, the nature or amount of any award, or
7 any other matter concerning the conduct of the arbi-
8 tration proceeding, unless—

9 “(A) the evidence would otherwise be ad-
10 missible in the court under the Federal Rules of
11 Evidence; or

12 “(B) the parties have otherwise stipulated.

13 “(d) TAXATION OF COSTS.—In any trial de novo de-
14 manded under subsection (c) in which arbitration was
15 done by consent of the parties, a district court may assess
16 costs, as provided in section 1920 of this title, and reason-
17 able attorneys fees against the party demanding the trial
18 de novo if—

19 “(1) such party fails to obtain a judgment, ex-
20 clusive of interest and costs, in the court, which is
21 substantially more favorable to such party than the
22 arbitration award; and

23 “(2) the court determines that the party’s con-
24 duct in seeking a trial de novo was in bad faith.”.

1 **SEC. 9. COMPENSATION OF ARBITRATORS AND NEUTRALS.**

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

4 **“§ 658. Compensation of arbitrators and neutrals**

5 “(a) COMPENSATION.—The district court shall, sub-
6 ject to limits set by the Judicial Conference of the United
7 States, establish and pay the amount of compensation, if
8 any, that each arbitrator or neutral shall receive for serv-
9 ices rendered in each case under this chapter.

10 “(b) TRANSPORTATION ALLOWANCES.—Under regu-
11 lations prescribed by the Director of the Administrative
12 Office of the United States Courts, a district court may
13 reimburse arbitrators for actual transportation expenses
14 necessarily incurred in the performance of duties under
15 this chapter.”.

16 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated for each fis-
18 cal year such sums as may be necessary to carry out chap-
19 ter 44 of title 28, United States Code, as amended by this
20 Act.

21 **SEC. 11. CONFORMING AMENDMENTS.**

22 (a) LIMITATION ON MONEY DAMAGES.—Section 901
23 of the Judicial Improvements and Access to Justice Act
24 (28 U.S.C. 652 note) is amended by striking subsection
25 (c).

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

4 **“CHAPTER 44—ALTERNATIVE**
5 **DISPUTE RESOLUTION”.**

6 (2) The table of contents for chapter 44 of title 28,
7 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.

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

“44. Alternative Dispute Resolution 651”.

