

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3528

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IN THE SENATE OF THE UNITED STATES

APRIL 22, 1998

Received; read twice and referred to the Committee on the Judiciary

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## 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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Alternative Dispute  
3 Resolution Act of 1998”.

4 **SEC. 2. ALTERNATIVE DISPUTE RESOLUTION PROCESSES**  
5 **TO BE AUTHORIZED IN ALL DISTRICT**  
6 **COURTS.**

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

9 **“§ 651. Authorization of alternative dispute resolu-**  
10 **tion**

11 “(a) DEFINITION.—For purposes of this chapter, an  
12 alternative dispute resolution process includes any process  
13 or procedure, other than an adjudication by a presiding  
14 judge, in which a neutral third party participates to assist  
15 in the resolution of issues in controversy, through proc-  
16 esses such as early neutral evaluation, mediation, mini-  
17 trial, and arbitration as provided in sections 654 through  
18 658.

19 “(b) AUTHORITY.—Each United States district court  
20 shall authorize, by local rule adopted under section  
21 2071(b), the use of alternative dispute resolution proc-  
22 esses in all civil actions, including adversary proceedings  
23 in bankruptcy, in accordance with this chapter, except that  
24 the use of arbitration may be authorized only as provided  
25 in section 654. Each United States district court shall de-  
26 vise and implement its own alternative dispute resolution

1 program, by local rule adopted under section 2071(b), to  
2 encourage and promote the use of alternative dispute reso-  
3 lution in its district.

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

11       “(d) ADMINISTRATION OF ALTERNATIVE DISPUTE  
12 RESOLUTION PROGRAMS.—Each United States district  
13 court shall designate an employee, or a judicial officer,  
14 who is knowledgeable in alternative dispute resolution  
15 practices and processes to implement, administer, oversee,  
16 and evaluate the court’s alternative dispute resolution pro-  
17 gram. Such person may also be responsible for recruiting,  
18 screening, and training attorneys to serve as neutrals and  
19 arbitrators in the court’s alternative dispute resolution  
20 program.

21       “(e) TITLE 9 NOT AFFECTED.—This chapter shall  
22 not affect title 9, United States Code.

23       “(f) PROGRAM SUPPORT.—The Federal Judicial Cen-  
24 ter and the Administrative Office of the United States  
25 Courts are authorized to assist the district courts in the

1 establishment and improvement of alternative dispute res-  
2 olution programs by identifying particular practices em-  
3 ployed in successful programs and providing additional as-  
4 sistance as needed and appropriate.”.

5 **SEC. 3. JURISDICTION.**

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

8 **“§ 652. Jurisdiction**

9 “(a) CONSIDERATION OF ALTERNATIVE DISPUTE  
10 RESOLUTION IN APPROPRIATE CASES.—Notwithstanding  
11 any provision of law to the contrary and except as pro-  
12 vided in subsections (b) and (c), each district court shall,  
13 by local rule adopted under section 2071(b), require that  
14 litigants in all civil cases consider the use of an alternative  
15 dispute resolution process at an appropriate stage in the  
16 litigation. Each district court shall provide litigants in all  
17 civil cases with at least one alternative dispute resolution  
18 process, including, but not limited to, mediation, early  
19 neutral evaluation, minitrial, and arbitration as authorized  
20 in sections 654 through 658. Any district court that elects  
21 to require the use of alternative dispute resolution in cer-  
22 tain cases may do so only with respect to mediation, early  
23 neutral evaluation, and, if the parties consent, arbitration.

24 “(b) ACTIONS EXEMPTED FROM CONSIDERATION OF  
25 ALTERNATIVE DISPUTE RESOLUTION.—Each district

1 court may exempt from the requirements of this section  
2 specific cases or categories of cases in which use of alter-  
3 native dispute resolution would not be appropriate. In de-  
4 fining these exemptions, each district court shall consult  
5 with members of the bar, including the United States At-  
6 torney for that district.

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

14       “(d) **CONFIDENTIALITY PROVISIONS.**—Until such  
15 time as rules are adopted under chapter 131 of this title  
16 providing for the confidentiality of alternative dispute res-  
17 olution processes under this chapter, each district court  
18 shall, by local rule adopted under section 2071(b), provide  
19 for the confidentiality of the alternative dispute resolution  
20 processes and to prohibit disclosure of confidential dispute  
21 resolution communications.”.

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

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

1 **“§ 653. Neutrals**

2       “(a) PANEL OF NEUTRALS.—Each district court that  
3 authorizes the use of alternative dispute resolution pro-  
4 cesses shall adopt appropriate processes for making  
5 neutrals available for use by the parties for each category  
6 of process offered. Each district court shall promulgate its  
7 own procedures and criteria for the selection of neutrals  
8 on its panels.

9       “(b) QUALIFICATIONS AND TRAINING.—Each person  
10 serving as a neutral in an alternative dispute resolution  
11 process should be qualified and trained to serve as a neu-  
12 tral in the appropriate alternative dispute resolution pro-  
13 cess. For this purpose, the district court may use, among  
14 others, magistrate judges who have been trained to serve  
15 as neutrals in alternative dispute resolution processes, pro-  
16 fessional neutrals from the private sector, and persons who  
17 have been trained to serve as neutrals in alternative dis-  
18 pute resolution processes. Until such time as rules are  
19 adopted under chapter 131 of this title relating to the dis-  
20 qualification of neutrals, each district court shall issue  
21 rules under section 2071(b) relating to the disqualification  
22 of neutrals (including, where appropriate, disqualification  
23 under section 455 of this title, other applicable law, and  
24 professional responsibility standards).”.

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

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

4 **“§ 654. Arbitration**

5 “(a) REFERRAL OF ACTIONS TO ARBITRATION.—

6 Notwithstanding any provision of law to the contrary and  
7 except as provided in subsections (b) and (c) of section  
8 652 and subsection (d) of this section, a district court may  
9 allow the referral to arbitration of any civil action (includ-  
10 ing any adversary proceeding in bankruptcy) pending be-  
11 fore it, except that referral to arbitration may not be made  
12 where—

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

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

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

20 “(b) SAFEGUARDS IN CONSENT CASES.—Until such  
21 time as rules are adopted under chapter 131 of this title  
22 relating to procedures described in this subsection, the dis-  
23 trict court shall, by local rule adopted under section  
24 2071(b), establish procedures to ensure that any civil ac-  
25 tion in which arbitration by consent is allowed under sub-  
26 section (a)—

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

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

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

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

14 **SEC. 6. ARBITRATORS.**

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

17 **“§ 655. Arbitrators**

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

22                   “(1) to conduct arbitration hearings;

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

24                   “(3) to make awards.

1       “(b) STANDARDS FOR CERTIFICATION.—Each dis-  
2       trict court that authorizes arbitration shall establish  
3       standards for the certification of arbitrators and shall cer-  
4       tify arbitrators to perform services in accordance with  
5       such standards and this chapter. The standards shall in-  
6       clude provisions requiring that any arbitrator—

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

9               “(2) shall be subject to the disqualification  
10       rules under section 455.

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

16       **SEC. 7. SUBPOENAS.**

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

19       **“§ 656. Subpoenas**

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

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

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

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

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

19 “(b) **SEALING OF ARBITRATION AWARD.**—The dis-  
20 trict court shall provide, by local rule adopted under sec-  
21 tion 2071(b), that the contents of any arbitration award  
22 made under this chapter shall not be made known to any  
23 judge who might be assigned to the case until the district  
24 court has entered final judgment in the action or the ac-  
25 tion has otherwise terminated.

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

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

6           “(2) ACTION RESTORED TO COURT DOCKET.—  
7 Upon a demand for a trial de novo, the action shall  
8 be restored to the docket of the court and treated  
9 for all purposes as if it had not been referred to ar-  
10 bitration.

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

17                   “(A) the evidence would otherwise be ad-  
18 missible in the court under the Federal Rules of  
19 Evidence; or

20                   “(B) the parties have otherwise stipu-  
21 lated.”.

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

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

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

2       “(a) COMPENSATION.—The district court shall, sub-  
3 ject to regulations approved by the Judicial Conference of  
4 the United States, establish the amount of compensation,  
5 if any, that each arbitrator or neutral shall receive for  
6 services rendered in each case under this chapter.

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

13 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

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

18 **SEC. 11. CONFORMING AMENDMENTS.**

19       (a) LIMITATION ON MONEY DAMAGES.—Section 901  
20 of the Judicial Improvements and Access to Justice Act  
21 (28 U.S.C. 652 note), is amended by striking subsection  
22 (c).

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

1     **“CHAPTER 44—ALTERNATIVE DISPUTE**  
2                                   **RESOLUTION”.**

3           (2) The table of contents for chapter 44 of title 28,  
4 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.”.

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

**“44. Alternative Dispute Resolution ..... 651”.**

Passed the House of Representatives April 21, 1998.

Attest:                                   ROBIN H. CARLE,  
*Clerk.*