

Union Calendar No. 281105TH CONGRESS
2^D SESSION**H. R. 3528****[Report No. 105-487]**

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

APRIL 21, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on March 23, 1998]

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Alternative Dispute Res-*
3 *olution 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 amended*
8 *to read as follows:*

9 **“§ 651. Authorization of alternative dispute resolution**

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

17 *“(b) AUTHORITY.—Each United States district court*
18 *shall authorize, by local rule adopted under section 2071(b),*
19 *the use of alternative dispute resolution processes in all civil*
20 *actions, including adversary proceedings in bankruptcy, in*
21 *accordance with this chapter, except that the use of arbitra-*
22 *tion may be authorized only as provided in section 654.*
23 *Each United States district court shall devise and imple-*
24 *ment its own alternative dispute resolution program, by*
25 *local rule adopted under section 2071(b), to encourage and*

1 *promote the use of alternative dispute resolution in its dis-*
2 *trict.*

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

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

19 “(e) *TITLE 9 NOT AFFECTED.—This chapter shall not*
20 *affect title 9.*

21 “(f) *PROGRAM SUPPORT.—The Federal Judicial Cen-*
22 *ter and the Administrative Office of the United States*
23 *Courts are authorized to assist the district courts in the es-*
24 *tablishment and improvement of alternative dispute resolu-*
25 *tion programs by identifying particular practices employed*

1 *in successful programs and providing additional assistance*
2 *as needed and appropriate.”.*

3 **SEC. 3. JURISDICTION.**

4 *Section 652 of title 28, United States Code, is amended*
5 *to read as follows:*

6 **“§ 652. Jurisdiction**

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

22 *“(b) ACTIONS EXEMPTED FROM CONSIDERATION OF*
23 *ALTERNATIVE DISPUTE RESOLUTION.—Each district court*
24 *may exempt from the requirements of this section specific*
25 *cases or categories of cases in which use of alternative dis-*

1 *pute resolution would not be appropriate. In defining these*
2 *exemptions, each district court shall consult with members*
3 *of the bar, including the United States Attorney for that*
4 *district.*

5 “(c) *AUTHORITY OF THE ATTORNEY GENERAL.*—*Noth-*
6 *ing in this section shall alter or conflict with the authority*
7 *of the Attorney General to conduct litigation on behalf of*
8 *the United States, with the authority of any Federal agency*
9 *authorized to conduct litigation in the United States courts,*
10 *or with any delegation of litigation authority by the Attor-*
11 *ney General.*

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

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

21 *Section 653 of title 28, United States Code, is amended*
22 *to read as follows:*

23 **“§ 653. Neutrals**

24 “(a) *PANEL OF NEUTRALS.*—*Each district court that*
25 *authorizes the use of alternative dispute resolution processes*

1 shall adopt appropriate processes for making neutrals
2 available for use by the parties for each category of process
3 offered. Each district court shall promulgate its own proce-
4 dures and criteria for the selection of neutrals on its panels.

5 “(b) *QUALIFICATIONS AND TRAINING.*—Each person
6 serving as a neutral in an alternative dispute resolution
7 process should be qualified and trained to serve as a neutral
8 in the appropriate alternative dispute resolution process.
9 For this purpose, the district court may use, among others,
10 magistrate judges who have been trained to serve as neutrals
11 in alternative dispute resolution processes, professional
12 neutrals from the private sector, and persons who have been
13 trained to serve as neutrals in alternative dispute resolution
14 processes. Until such time as rules are adopted under chap-
15 ter 131 of this title relating to the disqualification of
16 neutrals, each district court shall issue rules under section
17 2071(b) relating to the disqualification of neutrals (includ-
18 ing, where appropriate, disqualification under section 455
19 of this title, other applicable law, and professional respon-
20 sibility standards).”.

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

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

1 **“§ 654. Arbitration**

2 “(a) *REFERRAL OF ACTIONS TO ARBITRATION.*—Not-
3 *withstanding any provision of law to the contrary and ex-*
4 *cept as provided in subsections (b) and (c) of section 652*
5 *and subsection (d) of this section, a district court may allow*
6 *the referral to arbitration of any civil action (including any*
7 *adversary proceeding in bankruptcy) pending before it, ex-*
8 *cept that referral to arbitration may not be made where—*

9 “(1) *the action is based on an alleged violation*
10 *of a right secured by the Constitution of the United*
11 *States;*

12 “(2) *jurisdiction is based in whole or in part on*
13 *section 1343 of this title; or*

14 “(3) *the relief sought consists of money damages*
15 *in an amount greater than \$150,000.*

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

23 “(1) *consent to arbitration is freely and know-*
24 *ingly obtained; and*

25 “(2) *no party or attorney is prejudiced for refus-*
26 *ing to participate in arbitration.*

1 “(c) *PRESUMPTIONS.*—For purposes of subsection
2 (a)(3), a district court may presume damages are not in
3 excess of \$150,000 unless counsel certifies that damages ex-
4 ceed such amount.

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

10 **SEC. 6. ARBITRATORS.**

11 Section 655 of title 28, *United States Code*, is amended
12 to read as follows:

13 **“§ 655. Arbitrators**

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

18 “(1) to conduct arbitration hearings;

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

20 “(3) to make awards.

21 “(b) *STANDARDS FOR CERTIFICATION.*—Each district
22 court that authorizes arbitration shall establish standards
23 for the certification of arbitrators and shall certify arbitra-
24 tors to perform services in accordance with such standards

1 *and this chapter. The standards shall include provisions re-*
2 *quiring that any arbitrator—*

3 “(1) *shall take the oath or affirmation described*
4 *in section 453; and*

5 “(2) *shall be subject to the disqualification rules*
6 *under section 455.*

7 “(c) *IMMUNITY.—All individuals serving as arbitra-*
8 *tors in an alternative dispute resolution program under this*
9 *chapter are performing quasi-judicial functions and are en-*
10 *titled to the immunities and protections that the law ac-*
11 *cords to persons serving in such capacity.”.*

12 **SEC. 7. SUBPOENAS.**

13 *Section 656 of title 28, United States Code, is amended*
14 *to read as follows:*

15 **“§ 656. Subpoenas**

16 *“Rule 45 of the Federal Rules of Civil Procedure (relat-*
17 *ing to subpoenas) applies to subpoenas for the attendance*
18 *of witnesses and the production of documentary evidence*
19 *at an arbitration hearing under this chapter.”.*

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

21 *Section 657 of title 28, United States Code, is amended*
22 *to read as follows:*

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

24 “(a) *FILING AND EFFECT OF ARBITRATION AWARD.—*
25 *An arbitration award made by an arbitrator under this*

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

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

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

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

24 “(2) *ACTION RESTORED TO COURT DOCKET.*—

25 *Upon a demand for a trial de novo, the action shall*

1 *be restored to the docket of the court and treated for*
2 *all purposes as if it had not been referred to arbitra-*
3 *tion.*

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

10 “(A) *the evidence would otherwise be admis-*
11 *sible in the court under the Federal Rules of Evi-*
12 *dence; or*

13 “(B) *the parties have otherwise stipulated.*”.

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

15 *Section 658 of title 28, United States Code, is amended*
16 *to read as follows:*

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

18 “(a) *COMPENSATION.—The district court shall, subject*
19 *to limits set by the Judicial Conference of the United States,*
20 *establish and pay the amount of compensation, if any, that*
21 *each arbitrator or neutral shall receive for services rendered*
22 *in each case under this chapter.*

23 “(b) *TRANSPORTATION ALLOWANCES.—Under regula-*
24 *tions prescribed by the Director of the Administrative Office*
25 *of the United States Courts, a district court may reimburse*

1 arbitrators for actual transportation expenses necessarily
2 incurred in the performance of duties under this chapter.”.

3 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

4 *There are authorized to be appropriated for each fiscal*
5 *year such sums as may be necessary to carry out chapter*
6 *44 of title 28, United States Code, as amended by this Act.*

7 **SEC. 11. CONFORMING AMENDMENTS.**

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

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

14 **“CHAPTER 44—ALTERNATIVE DISPUTE**
15 **RESOLUTION”.**

16 (2) *The table of contents for chapter 44 of title 28,*
17 *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.”.*

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

“44. Alternative Dispute Resolution 651”.

Union Calendar No. 281

105TH CONGRESS
2^D SESSION

H. R. 3528

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A BILL

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