

105TH CONGRESS  
2D SESSION

# S. 2373

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.

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## IN THE SENATE OF THE UNITED STATES

JULY 30, 1998

Mr. GRASSLEY (for himself and Mr. DURBIN) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## 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”.

6 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

7 Congress finds that—

8 (1) alternative dispute resolution, when sup-  
9 ported by the bench and bar, and utilizing properly

1 trained neutrals in a program adequately adminis-  
2 tered by the court, has the potential to provide a va-  
3 riety of benefits, including greater satisfaction of the  
4 parties, innovative methods of resolving disputes,  
5 and greater efficiency in achieving settlements;

6 (2) certain forms of alternative dispute resolu-  
7 tion, including mediation, early neutral evaluation,  
8 minitrials, and voluntary arbitration, may have po-  
9 tential to reduce the large backlog of cases now  
10 pending in some federal courts throughout the  
11 United States, thereby allowing the courts to process  
12 their remaining cases more efficiently; and

13 (3) the continued growth of Federal appellate  
14 court-annexed mediation programs suggests that this  
15 form of alternative dispute resolution can be equally  
16 effective in resolving disputes in the federal trial  
17 courts; therefore, the district courts should consider  
18 including mediation in their local alternative dispute  
19 resolution programs.

20 **SEC. 3. ALTERNATIVE DISPUTE RESOLUTION PROCESSES**  
21 **TO BE AUTHORIZED IN ALL DISTRICT**  
22 **COURTS.**

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

1 **“§ 651. Authorization of alternative dispute resolu-**  
2 **tion**

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

11 “(b) AUTHORITY.—Each United States district court  
12 shall authorize, by local rule adopted under section  
13 2071(a), the use of alternative dispute resolution processes  
14 in all civil actions, including adversary proceedings in  
15 bankruptcy, in accordance with this chapter, except that  
16 the use of arbitration may be authorized only as provided  
17 in section 654. Each United States district court shall de-  
18 vise and implement its own alternative dispute resolution  
19 program, by local rule adopted under section 2071(a), to  
20 encourage and promote the use of alternative dispute reso-  
21 lution in its district.

22 “(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION  
23 PROGRAMS.—In those courts where an alternative dispute  
24 resolution program is in place on the date of the enact-  
25 ment of the Alternative Dispute Resolution Act of 1998,  
26 the court shall examine the effectiveness of that program

1 and adopt such improvements to the program as are con-  
2 sistent with the provisions and purposes of this chapter.

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

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

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

22 **SEC. 4. JURISDICTION.**

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

1 **“§ 652. Jurisdiction**

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

17       “(b) ACTIONS EXEMPTED FROM CONSIDERATION OF  
18 ALTERNATIVE DISPUTE RESOLUTION.—Each district  
19 court may exempt from the requirements of this section  
20 specific cases or categories of cases in which use of alter-  
21 native dispute resolution would not be appropriate. In de-  
22 fining these exemptions, each district court shall consult  
23 with members of the bar, including the United States At-  
24 torney for that district.

25       “(c) AUTHORITY OF THE ATTORNEY GENERAL.—  
26 Nothing in this section shall alter or conflict with the au-

1 thority of the Attorney General to conduct litigation on  
2 behalf of the United States, with the authority of any Fed-  
3 eral agency authorized to conduct litigation in the United  
4 States courts, or with any delegation of litigation authority  
5 by the Attorney General.

6 “(d) CONFIDENTIALITY PROVISIONS.—Until such  
7 time as rules are adopted under chapter 131 of this title  
8 providing for the confidentiality of alternative dispute res-  
9 olution processes under this chapter, each district court  
10 shall, by local rule adopted under section 2071(a), provide  
11 for the confidentiality of the alternative dispute resolution  
12 processes and to prohibit disclosure of confidential dispute  
13 resolution communications.”.

14 **SEC. 5. MEDIATORS AND NEUTRAL EVALUATORS.**

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

17 **“§ 653. Neutrals**

18 “(a) PANEL OF NEUTRALS.—Each district court that  
19 authorizes the use of alternative dispute resolution proc-  
20 esses shall adopt appropriate processes for making  
21 neutrals available for use by the parties for each category  
22 of process offered. Each district court shall promulgate its  
23 own procedures and criteria for the selection of neutrals  
24 on its panels.

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

17 **SEC. 6. ACTIONS REFERRED TO ARBITRATION.**

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

20 **“§ 654. Arbitration**

21           “(a) **REFERRAL OF ACTIONS TO ARBITRATION.**—  
22 Notwithstanding any provision of law to the contrary and  
23 except as provided in subsections (a), (b), and (c) of sec-  
24 tion 652 and subsection (d) of this section, a district court  
25 may allow the referral to arbitration of any civil action

1 (including any adversary proceeding in bankruptcy) pend-  
2 ing before it when the parties consent, except that referral  
3 to arbitration may not be made where—

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

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

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

11 “(b) SAFEGUARDS IN CONSENT CASES.—Until such  
12 time as rules are adopted under chapter 131 of this title  
13 relating to procedures described in this subsection, the dis-  
14 trict court shall, by local rule adopted under section  
15 2071(a), establish procedures to ensure that any civil ac-  
16 tion in which arbitration by consent is allowed under sub-  
17 section (a)—

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

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

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

1       “(d) EXISTING PROGRAMS.—Nothing in this chapter  
 2 is deemed to affect any action in which arbitration is con-  
 3 ducted pursuant to section 906 of the Judicial Improve-  
 4 ments and Access to Justice Act (Public Law 100–702),  
 5 as in effect prior to the date of its repeal.”.

6 **SEC. 7. ARBITRATORS.**

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

9 **“§ 655. Arbitrators**

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

14               “(1) to conduct arbitration hearings;

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

16               “(3) to make awards.

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

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

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

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

8 **SEC. 8. SUBPOENAS.**

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

11 **“§ 656. Subpoenas**

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

16 **SEC. 9. ARBITRATION AWARD AND JUDGMENT.**

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

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

20           “(a) FILING AND EFFECT OF ARBITRATION  
21 AWARD.—An arbitration award made by an arbitrator  
22 under this chapter, along with proof of service of such  
23 award on the other party by the prevailing party or by  
24 the plaintiff, shall be filed promptly after the arbitration  
25 hearing is concluded with the clerk of the district court

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

9       “(b) SEALING OF ARBITRATION AWARD.—The dis-  
10 trict court shall provide, by local rule adopted under sec-  
11 tion 2071(a), that the contents of any arbitration award  
12 made under this chapter shall not be made known to any  
13 judge who might be assigned to the case until the district  
14 court has entered final judgment in the action or the ac-  
15 tion has otherwise terminated.

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

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

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

23       Upon a demand for a trial de novo, the action shall  
24 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 stipu-  
 13 lated.”.

14 **SEC. 10. COMPENSATION OF ARBITRATORS AND NEUTRALS.**

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

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

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

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

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

4 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

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

9 **SEC. 12. CONFORMING AMENDMENTS.**

10 (a) **LIMITATION ON MONEY DAMAGES.**—Section 901  
 11 of the Judicial Improvements and Access to Justice Act  
 12 (28 U.S.C. 652 note), is amended by striking subsection  
 13 (c).

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

17 **“CHAPTER 44—ALTERNATIVE DISPUTE**  
 18 **RESOLUTION”.**

19 (2) The table of contents for chapter 44 of title 28,  
 20 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.”.

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

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

○