

ALTERNATIVE DISPUTE RESOLUTION

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Ralph Becker

This act modifies provisions related to administrative procedures to encourage state agencies to develop and implement alternative dispute resolution procedures. The act defines terms. The act provides guidelines for developing alternative dispute resolution procedures. The act requires confidentiality of information in alternative dispute resolution procedures. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

63-46c-101, Utah Code Annotated 1953

63-46c-102, Utah Code Annotated 1953

63-46c-103, Utah Code Annotated 1953

63-46c-104, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-46c-101** is enacted to read:

CHAPTER 46c. GOVERNMENTAL DISPUTE RESOLUTION ACT

63-46c-101. Title.

This chapter is known as the "Governmental Dispute Resolution Act."

Section 2. Section **63-46c-102** is enacted to read:

63-46c-102. Definitions.

As used in this chapter:

(1) "Agency" is defined in Section 63-46b-2.

(2) "Alternative dispute resolution" or "ADR" means a process other than litigation used to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation, fact-finding, conciliation, early neutral evaluation, and policy dialogues.

(3) "ADR organization" is defined in Section 78-31b-2.

(4) (a) "ADR provider" means a neutral person who:

(i) meets the qualifications established by Judicial Council rules authorized under Section 78-31b-5; and

(ii) conducts an ADR procedure.

(b) "ADR provider" includes an arbitrator, mediator, and early neutral evaluator and may be an employee or an independent contractor.

(5) "Arbitration" means a private hearing before an ADR provider or panel of ADR providers who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented.

(6) "Mediation" is defined in Section 78-31b-2.

(7) "Neutral" means a person who holds himself out to the public as a qualified person trained to use alternative dispute resolution techniques to resolve conflicts.

Section 3. Section **63-46c-103** is enacted to read:

63-46c-103. Alternative dispute resolution -- Authorization -- Procedures -- Agency coordinators -- Contracts.

(1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.

(2) (a) An agency may develop and adopt an ADR procedure governed by rules, adopted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency shall consider:

(i) public interest in maintaining open access to and neutrality of an ADR provider or neutral;

(ii) providing a broad selection of ADR providers or neutrals; and

(iii) creating objective criteria for an ADR provider or neutral to become qualified to conduct an agency ADR procedure.

(3) ADR procedures developed and used by an agency must be consistent with the

requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(4) ADR procedures are voluntary and may be used:

(a) at the discretion of the agency; or

(b) with an agency that has adopted an ADR procedure under Subsection (2), at the request of an interested party to a dispute.

(5) An agency that chooses to use an ADR procedure shall develop an agreement with interested parties that provides:

(a) (i) for the appointment of an ADR provider or a neutral;

(ii) whose appointment is agreed upon by all parties to the dispute;

(b) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive; and

(c) sets forth how costs and expenses shall be apportioned among the parties.

(6) (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree that the person may continue to serve.

(b) An agency may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider or neutral.

(7) An agreement developed in accordance with Subsection (5) may be included in an enforcement order, stipulation, contract, permit, or other document entered into or issued by the agency.

(8) (a) The administrative head of an agency may designate an employee as the ADR coordinator for that agency.

(b) The agency ADR coordinator shall:

(i) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;

(ii) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of ADR procedures and suggest any modifications;

(iii) monitor the agency's use of ADR procedures;

(iv) arrange for training of agency staff in ADR procedures; and

(v) provide information about the agency's ADR procedures to the agency's staff and to the public.

(9) In order to implement the purposes of this chapter, an agency may employ or contract with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any service necessary on a case-by-case basis, on a service basis, or on a program basis.

(10) ADR procedures developed and used under this chapter are subject to the confidentiality requirements of Section 78-31b-8.

Section 4. Section **63-46c-104** is enacted to read:

63-46c-104. Effect on other laws.

Nothing in this chapter or in the agreements and procedures developed in Section 63-46c-103 shall:

(1) limit other dispute resolution procedures available to an agency; and

(2) deny a person a right granted under federal or other state law, including a right to an administrative or judicial hearing.