

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.

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

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

32 (5) "Certified ADR provider" means a person providing services as a mediator or arbitrator
33 who is certified or whose certification by another state is recognized under Title 58, Chapter 39a,
34 Alternative Dispute Resolution Providers Certification Act.

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

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

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

39 **63-46c-103. Alternative dispute resolution -- Authorization -- Procedures -- Agency**
40 **coordinators -- Contracts.**

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

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

47 (3) ADR procedures developed and used by an agency must be consistent with the
48 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

50 (a) at the discretion of the agency; or

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

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

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

56 (ii) whose appointment is agreed upon by all parties to the dispute and who serves at the
57 will of the parties;

58 (b) specifies any limitation periods applicable to the commencement or conclusion of

59 formal administrative or judicial proceedings and, if applicable, specifies any time periods that the
60 parties have agreed to waive; and

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

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

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

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

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

74 (b) The agency ADR coordinator shall:

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

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

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

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

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

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

86 (10) ADR procedures developed and used under this chapter are subject to:

87 (a) the confidentiality requirements of Section 78-31b-8; and

88 (b) Title 52, Chapter 4, Open and Public Meetings.

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

90 **63-46c-104. Effect on other laws.**
91 Nothing in this chapter or in the agreements and procedures developed in Section
92 63-46c-103 shall:
93 (1) limit other dispute resolution procedures available to an agency; and
94 (2) deny a person a right granted under federal or other state law, including a right to an
95 administrative or judicial hearing.

Legislative Review Note
as of 1-25-01 5:39 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel