

Representative Ralph Becker proposes to substitute the following bill:

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



26 to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation,
 27 fact-finding, conciliation, early neutral evaluation, and policy dialogues.

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

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

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

32 (ii) conducts an ADR procedure.

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

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

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

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

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

42 **63-46c-103. Alternative dispute resolution -- Authorization -- Procedures -- Agency**
 43 **coordinators -- Contracts.**

44 (1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy
 45 involving any of the agency's operations, programs, or functions, including formal and informal
 46 adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy
 47 development, and contract administration **§ ONLY WITH THE CONSENT OF ALL THE INTERESTED**
 47a **PARTIES** **h** .

48 (2) h (a) h An agency may develop and adopt an ADR procedure governed by rules, adopted
 48a in
 49 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

49a **h (b) IN DEVELOPING AND ADOPTING AN ADR PROCEDURE UNDER SUBSECTION (2)(a), AN**
 49b **AGENCY SHALL CONSIDER:**

49c **(i) PUBLIC INTEREST IN MAINTAINING OPEN ACCESS TO AND NEUTRALITY OF AN ADR**
 49d **PROVIDER OR NEUTRAL;**

49e **(ii) PROVIDING A BROAD SELECTION OF ADR PROVIDERS OR NEUTRALS; AND**

49f **(iii) CREATING OBJECTIVE CRITERIA FOR AN ADR PROVIDER OR NEUTRAL TO BECOME**
 49g **QUALIFIED TO CONDUCT AN AGENCY ADR PROCEDURE.** **h**

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

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

- 53 (a) at the discretion of the agency; or
54 (b) with an agency that has adopted an ADR procedure under Subsection (2), at the request
55 of an interested party to a dispute.
56 (5) An agency that chooses to use an ADR procedure shall develop an agreement with

57 interested parties that provides:

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

59 (ii) whose appointment is agreed upon by all parties to the dispute ~~h~~ **[and who serves at the**

60 **will of the parties] h** ;

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

62 formal administrative or judicial proceedings and, if applicable, specifies any time periods that the

63 parties have agreed to waive; and

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

65 (6) (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official,

66 financial, or personal conflict of interest with any issue or party in controversy unless the conflict

67 of interest is fully disclosed in writing to all of the parties and all of the parties agree that the

68 person may continue to serve.

69 (b) An agency may make rules in accordance with Title 63, Chapter 46a, Utah

70 Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider

71 or neutral.

72 (7) An agreement developed in accordance with Subsection (5) may be included in an

73 enforcement order, stipulation, contract, permit, or other document entered into or issued by the

74 agency.

75 (8) (a) The administrative head of an agency may designate an employee as the ADR

76 coordinator for that agency.

77 (b) The agency ADR coordinator shall:

78 (i) make recommendations to the agency's executive staff on issues and disputes that are

79 suitable for alternative dispute resolution;

80 (ii) analyze the agency's enabling statutes and rules to determine whether they contain

81 impediments to the use of ADR procedures and suggest any modifications;

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

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

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

85 the public.

86 (9) In order to implement the purposes of this chapter, an agency may employ or contract

87 with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any

88 service necessary on a case-by-case basis, on a service basis, or on a program basis.

89 (10) ADR procedures developed and used under this chapter are subject to ~~h~~ [:

90 ~~— (a) h~~ the confidentiality requirements of Section 78-31b-8 ~~h~~ [; ~~and~~

91 ~~— (b) Title 52, Chapter 4, Open and Public Meetings] h~~ .

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

93 **63-46c-104. Effect on other laws.**

94 Nothing in this chapter or in the agreements and procedures developed in Section

95 63-46c-103 shall:

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

97 (2) deny a person a right granted under federal or other state law, including a right to an

98 administrative or judicial hearing.