

**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.

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

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 and who serves at the  
60 will of the parties;

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:

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

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

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.