

HOUSE BILL No. 2333

By Committee on Judiciary

2-5

AN ACT concerning dispute resolution; amending K.S.A. 2000 Supp. 5-501, 5-502 and 5-509 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) In all district courts, the court of appeals and the supreme court, any civil action shall be ordered to dispute resolution upon stipulation of the parties. Such a civil action may be ordered to dispute resolution upon the motion of any party. Absent the parties agreeing to a dispute resolution process, the court, upon its own motion, may order the parties to undertake and participate in such dispute resolution process as the court determines appropriate.

(b) If counsel for any party, after conferring with counsel's respective clients and other stakeholders, all other attorneys and unrepresented parties, conclude that referral to dispute resolution has no reasonable chance of being productive, the parties may opt out by so advising the court, in writing, within 30 days of the order of referral. The matter shall not thereafter be referred by the court to dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to dispute resolution.

(c) If the parties agree to participate in the dispute resolution program but cannot agree upon the neutral, then the court shall select a neutral from individuals or programs.

(d) Nothing shall preclude the parties from agreeing:

(1) To participate in any independent dispute resolution program;

(2) on different neutrals than that selected by the court either before or after the entry of an order entered pursuant to this act;

(3) on a neutral not otherwise identified on any court maintained list.

(e) The supreme court shall adopt rules as shall be appropriate for the scheduling of disputes referred to dispute resolution, requirements that settlement offers and responses be exchanged between the parties prior to the mediation, sanctions for failure to mediate in good faith and such additional rules as may be appropriate.

(f) Court ordered dispute resolution may be undertaken pursuant to a registered program.

(g) This section shall be part of and supplemental to the dispute res-

1 olution act.

2 Sec. 2. K.S.A. 2000 Supp. 5-501 is hereby amended to read as fol-
3 lows: 5-501. (a) K.S.A. 2000 Supp. 5-501 through 5-516, and amendments
4 thereto, shall be known and may be cited as the dispute resolution act.

5 (b) The dispute resolution act shall apply to registered and approved
6 programs and individuals, and personnel thereof, to parties to dispute
7 resolution being conducted by registered programs and individuals, and
8 to disputes referred by a court to dispute resolution ~~other than litigation~~.
9 The dispute resolution act shall not apply to any judge acting in an official
10 capacity.

11 Sec. 3. K.S.A. 2000 Supp. 5-502 is hereby amended to read as fol-
12 lows: 5-502. As used in the dispute resolution act:

13 (a) "Registered programs" and "registered individuals" refer to those
14 programs and individuals who have registered with the director of dispute
15 resolution and are eligible to apply for public funding or approval from
16 the director of dispute resolution;

17 (b) "approval" means the program or individual has applied for in-
18 clusion on a list of programs and individuals and has been found to have
19 met the requirements and guidelines to be considered for the receipt of
20 public funding or to be recommended to the court as an approved service
21 provider.

22 (c) "council" means the advisory council on dispute resolution;

23 (d) "director" means the director of dispute resolution;

24 (e) "dispute resolution" means a process by which the parties in-
25 volved in a dispute voluntarily agree or are referred or ordered by a court
26 to enter into discussion and negotiation with the assistance of a neutral
27 person;

28 (f) "mediation" means the intervention into a dispute by a third party
29 who has no decision making authority, is impartial to the issues being
30 discussed, assists the parties in defining the issues in dispute, facilitates
31 communication between the parties and assists the parties in reaching
32 resolution;

33 (g) "arbitration" means a proceeding in which a neutral person or
34 panel hears a formal case presentation and makes an award, which can
35 be binding or nonbinding upon the parties relative to a prior agreement;

36 (h) "neutral evaluation" means a proceeding conducted by a neutral
37 person who helps facilitate settlement of a case by giving the parties to
38 the dispute an evaluation of the case;

39 (i) ~~"summary jury trial" means a formal case presentation to a jury
40 and judge which results in a nonbinding decision~~ *an informal settlement
41 process in which jurors hear abbreviated case presentations or issues
42 within a case. A judge presides over the hearing, but there are no wit-
43 nesses, and the rules of evidence are relaxed. After the trial, the jurors*

1 *retire to deliberate and then deliver an advisory verdict. The deliberations*
2 *of the jurors and the verdict become the starting point for settlement*
3 *negotiations among the parties;*

4 (j) ~~“mini trial” means a formal case presentation to a party representa-~~
5 ~~tative and an expert neutral person who makes a nonbinding decision~~
6 *process in which each party and counsel present the case or an issue*
7 *within a case before a selected representative for each party and a neutral*
8 *third party, to define the issues and develop a basis for realistic settlement*
9 *negotiations. The neutral third party may issue an advisory opinion re-*
10 *garding the merits of the case;*

11 (k) “settlement” means a proceeding in which someone other than
12 the presiding judge assists the parties in reaching a resolution;

13 (l) “conciliation” means a proceeding in which a neutral person assists
14 the parties in reconciliation efforts;

15 (m) “neutral person” or “neutral” means the impartial third party
16 who intervenes in a dispute at the request of the parties or the court in
17 order to help facilitate settlement or resolution of a dispute.

18 Sec. 4. K.S.A. 2000 Supp. 5-509 is hereby amended to read as fol-
19 lows: 5-509. (a) *In addition to the cases provided for in section 1, and*
20 *amendments thereto, the following types of cases may be accepted for*
21 *dispute resolution by an approved program or individual:*

22 (1) Civil claims and disputes, including, but not limited to, consumer
23 and commercial complaints, disputes involving allegations of shoplifting,
24 disputes between neighbors, disputes between business associates, dis-
25 putes between landlords and tenants, disputes involving matters under
26 the small claims procedure act, farmer-lender disputes, and disputes
27 within communities;

28 (2) disputes concerning child custody, residency, visitation rights,
29 parenting time and other areas of domestic relations;

30 (3) juvenile offenses and disputes involving juveniles;

31 (4) disputes between victims and offenders, in which the victims vol-
32 untarily agree to participate in mediation;

33 (5) disputes involving allegations of unlawful discrimination under
34 state or federal laws;

35 (6) disputes referred by county attorneys or district attorneys;

36 (7) disputes involving employer and employee relations under K.S.A.
37 72-5413 through 72-5432, and amendments thereto, or K.S.A. 75-4321
38 through 75-4337, and amendments thereto; and

39 (8) disputes referred by a court, an attorney, a law enforcement of-
40 ficer, a social service agency, a school or any other interested person or
41 agency, including the request of the parties involved.

42 (b) A case may be referred prior to the commencement of formal
43 judicial proceedings or may be referred as a pending court case. If a court

1 refers a case, information shall be provided to the court as to whether an
2 agreement was reached and, if available, a copy of the signed agreement
3 shall be provided to the court.

4 *(c) Any judge by order or by court rule may establish a dispute res-*
5 *olution program consistent with this act. It is the purpose of the court to*
6 *provide an alternative mechanism for the resolution of civil disputes, by*
7 *means of dispute resolution procedures for disposition before trial of cer-*
8 *tain civil cases with resultant savings in time and expenses to the litigants*
9 *and to the court without sacrificing the quality of justice to be rendered*
10 *or the right of the litigants to jury trial in the event that a settlement*
11 *satisfactory to the parties is not achieved through dispute resolution.*

12 ~~(d)~~ (d) Before the dispute resolution process begins, the neutral per-
13 son conducting the process shall provide the parties with a written state-
14 ment setting forth the procedures to be followed.

15 Sec. 5. K.S.A. 2000 Supp. 5-501, 5-502 and 5-509 are hereby
16 repealed.

17 Sec. 6. This act shall take effect and be in force from and after its
18 publication in the statute book.

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