

SENATE BILL No. 14

AN ACT concerning mediation; relating to disputes which may be ordered to mediation; relating to certain costs of mediation; amending K.S.A. 44-817 and K.S.A. 2000 Supp. 5-501 and 5-509 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 5-501 is hereby amended to read as follows: 5-501. (a) K.S.A. 2000 Supp. 5-501 through 5-516, and amendments thereto, shall be known and may be cited as the dispute resolution act.

(b) The dispute resolution act shall apply to registered and approved programs and individuals, and personnel thereof, to parties to dispute resolution being conducted by registered programs and individuals, and to disputes referred by a court, *by state government or as otherwise provided by statute* to dispute resolution other than litigation. The dispute resolution act shall not apply to any judge acting in an official capacity.

Sec. 2. K.S.A. 2000 Supp. 5-509 is hereby amended to read as follows: 5-509. (a) ~~The following types of cases may be accepted for dispute resolution by an approved program or individual:~~

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

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

~~(3) juvenile offenses and disputes involving juveniles;~~

~~(4) disputes between victims and offenders, in which the victims voluntarily agree to participate in mediation;~~

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

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

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

~~(8) disputes referred by a court, an attorney, a law enforcement officer, a social service agency, a school or any other interested person or agency, including the request of the parties involved. Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case and that the costs of the dispute resolution process are justified relative to the parties' ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process conducted by: (1) A program or individual approved pursuant to rules of the supreme court adopted pursuant to the dispute resolution act; or (2) an individual licensed to practice law in the state of Kansas.~~

~~(b) A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case, information shall be provided to the court as to whether an agreement was reached and, if available, a copy of the signed agreement shall be provided to the court.~~

~~(c) Before the dispute resolution process begins, the neutral person conducting the process shall provide the parties with a written statement setting forth the procedures to be followed.~~

New Sec. 3. (a) The avoidance of mediation ordered pursuant to K.S.A. 5-509, and amendments thereto, without just cause or excuse, shall constitute evidence of bad faith.

(b) Upon a finding that a party to a dispute has acted in bad faith by deliberately and intentionally avoiding mediation, the court may order such party to pay the reasonable attorney fees of the other party or parties which are directly related to the mediation.

Sec. 4. K.S.A. 44-817 is hereby amended to read as follows: 44-817.

(a) The secretary of human resources shall have power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon the secretary's own initiative or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator

nor the secretary of human resources shall have any power of compulsion in mediation proceedings. The secretary of human resources *or the secretary's designee* shall ~~provide necessary expenses for such mediators as may be appointed, under reasonable compensation not exceeding \$50 per day for each such mediator, and be authorized to charge fees to the parties for mediation, conflict resolution services or training programs contracted for to be provided by the agency and shall~~ prescribe reasonable rules of procedure for such mediators. *The costs for such mediation services shall be allocated by the secretary or the secretary's designee.*

(b) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(c) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A. 38-1522 and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

Sec. 5. K.S.A. 44-817 and K.S.A. 2000 Supp. 5-501 and 5-509 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.