

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 772

By: Henry

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 1801, 1802, as amended by Section 1, Chapter 323, O.S.L. 2000, 1803 and 1804 (12 O.S. Supp. 2000, Section 1802), which relate to dispute resolution; clarifying language; defining terms; relieving Administrative Director of Courts of certain obligations; authorizing other forms of dispute resolution by agreement; exempting certain entities; deleting certain provisions; requiring presence at mediation; providing for confidentiality of certain information; prohibiting formality or sanctions; prohibiting liability for certain civil damages; waiving certain confidentiality privileges; providing certain duties of Director; describing scope of duties; providing for certain referrals; describing applicability of certain rules; creating the Community Dispute Resolution Program Advisory Board and describing membership terms; authorizing certain reimbursements; tolling statute of limitation; providing for waiver of certain rights; describing certain duties of Director; establishing certain costs and fees; providing for waiver of certain fees; requiring certain fees be deposited and allocated in certain manner; providing for a determination of eligibility; providing contents of certain application; clarifying scope of certain provisions; requiring certain compliance for fund eligibility; requiring center to provide certain data; providing for disbursement of certain monies; granting certain authority to Director; authorizing personnel for Director; authorizing inspection by State Auditor and Inspector; repealing 12 O.S. 1991, Sections 1805, 1806, 1807, 1808, 1809, as amended by Section 1, Chapter 225, O.S.L. 1994, 1810, 1811 and 1813 (12 O.S. Supp. 2000, Section 1809), which relate to dispute resolution proceedings; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1801, is amended to read as follows:

Section 1801. The Legislature is aware of the fact that many disputes arise ~~between~~ involving citizens of this state which are ~~of~~

~~small social or economic magnitude and can be~~ both costly and time consuming if resolved through a formal judicial proceeding. Many times such disputes can be resolved in a fair and equitable manner through less formal proceedings. Such proceedings can also help alleviate the backlog of cases which burden the judicial system in this state. It is therefore the purpose of this act to encourage the use of mediation and other available alternatives to resolve disputes and to provide to all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious.

~~Sections 1 through 6~~ Section 1801 et seq. of this ~~act~~ title shall be known and may be cited as the "Dispute Resolution Act".

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1802, as amended by Section 1, Chapter 323, O.S.L. 2000 (12 O.S. Supp. 2000, Section 1802), is amended to read as follows:

Section 1802. As used in the Dispute Resolution Act:

1. "Administrator" means any county, municipality, accredited law school, or agency of this state that administers a center pursuant to the provisions of this act;

2. "Center" means a community-based facility which provides dispute resolution services consisting of conciliation, mediation, arbitration, facilitation, or other forms and techniques of dispute resolution as part of the community dispute resolution program;

3. "Community dispute resolution program" means a program authorized under this act to provide dispute resolution services to parties to the types of disputes outlined in Section 1804 of this title;

4. "Director" means the Administrative Director of the Courts;

5. "District Court Mediation Act" means Section 1821 et seq. of this title;

6. "Initiating party" means the party who first seeks mediation- at a center;

~~2.~~ 7. "Mediation" means the process of resolving a dispute with the assistance of a mediator outside of a formal court proceeding~~;~~;

~~3.~~ 8. "Mediator" means any person:

- a. approved ~~certified pursuant to the provisions of the Dispute Resolution Act or~~ by the Director to act as a mediator in a community dispute resolution program,
- b. qualified as a mediator under the District Court Mediation Act to assist in the resolution of a dispute~~,~~ or
- c. who has otherwise successfully completed any mediation training program recognized by the Oklahoma Supreme Court or designated by any county, municipality, accredited law school, or agency of this state under a program to provide mediation services pursuant to subsection A of Section 1803 of this title;

~~4.~~ 9. "Party" means an individual person, company, ~~or~~ governmental agency~~,~~ or other person having an interest in a dispute;

~~5.~~ 10. "Resolution" means the final determination of the dispute, arrived at by the parties ~~upon their own initiative~~ or by anyone authorized in writing to act in their behalf ~~or with the help of a mediator.~~; and

~~6.~~ 11. "Responding party" means the party who is named by the initiating party as the other party in a dispute where mediation is sought through a center.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1803, is amended to read as follows:

Section 1803. A. Any county, municipality, accredited law school or agency of this state is hereby authorized to establish programs for the purpose of providing mediation services pursuant to the provisions of the Dispute Resolution Act, ~~to be administered and supervised under the direction of the Administrative Director of the~~

~~Courts. The Administrative Director shall promulgate rules and regulations, subject to the approval of the Supreme Court of the State of Oklahoma, to effectuate the purposes of the Dispute Resolution Act.~~

~~B. Mediation pursuant to the provisions of the Dispute Resolution Act shall be available to any party eligible according to the jurisdictional guidelines established by the Administrative Director. The company or governmental agency shall be represented in mediation by a person authorized in writing to act in behalf of such entity to the extent necessary to arrive at a resolution pursuant to the provisions of the Dispute Resolution Act. Nothing in this act shall preclude the parties from agreeing to any alternative dispute resolution process, including mediation, independent of this act or from selecting and compensating a mediator of their choice. Centers established pursuant to Section 1804 of this title shall advise parties of this option.~~

~~C. Nothing in this act shall require any county, municipality, accredited law school, agency of this state, or other governmental entity operating a program authorized by Section 1803 of this title to operate the authorized program under the auspices of the Director or to utilize the services of volunteer mediators.~~

~~D. Mediators participating in a program sponsored by a state agency are deemed an employee of that agency solely for the limited purpose of Section 20f of Title 74 of the Oklahoma Statutes.~~

~~D. Such rules and regulations shall include:~~

~~1. Qualifications to certify mediators to assure their competence and impartiality; and~~

~~2. Jurisdictional guidelines including types of disputes which may be subject to the Dispute Resolution Act; and~~

~~3. Standard procedures for mediation which shall be complied with in all mediation proceedings; and~~

~~4. A method by which a court may grant a continuance in contemplation of dismissal on the condition that the defendant in a criminal action or the plaintiff and defendant in a civil action participate in mediation and a resolution is reached by the parties; and~~

~~5. A form for a written agreement for participation in mediation; and~~

~~6. A form for a written record of the termination of mediation~~

E. 1. A party engaging in mediation pursuant to this act shall be present in person or represented in mediation by a person authorized in writing to act on behalf of the entity to the extent necessary to arrive at a resolution.

2. Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.

3. No part of the proceeding shall be considered a matter of public record.

4. No mediator or participant in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceedings.

5. Each mediation session shall be informal. No adjudication sanction or penalty may be made or imposed by the mediator, the center, or the Director.

6. No mediator, employee, or agent of a mediator shall be held liable for civil damages for any statement or decision made in the process of mediating or settling a dispute unless the action of the person was a result of gross negligence with malicious purpose or in a manner exhibiting willful disregard of the rights, safety, or property of any party to the mediation.

7. If a party who has participated in mediation brings an action for damages against a mediator arising out of mediation, for purposes of that action the privilege provided for in paragraph 2 of this subsection shall be deemed to be waived as to the party bringing the action.

8. To the extent they are consistent with this section, the provisions of Section 1824 of this title apply to all mediations conducted pursuant to this act.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1804, is amended to read as follows:

Section 1804. A. The Administrative Director of the Courts shall promulgate rules, subject to the approval of the Oklahoma Supreme Court, to establish programs for the purpose of providing mediation services to any party who meets the financial eligibility standards of the Legal Aid Services Act, or in any matter where the amount in dispute does not exceed the small claims jurisdictional requirement set forth in Section 1751 of this title, further limited to the following kinds of disputes:

1. Criminal matters such as misdemeanors and nonviolent felonies;

2. Civil cases coming under the small claims jurisdictional requirements set for in Section 1751 of this title;

3. Consumer concerns, such as consumer complaints involving goods and services provided by business;

4. Domestic problems such as divorce, legal separation, child custody, visitation, spousal maintenance, and family crisis intervention;

5. Housing disputes such as landlord-tenant and neighbor disputes;

6. Employment matters such as compensation, working conditions, and termination disputes; and

7. Debtor-creditor negotiations.

If a center encounters disputes or parties who require attention beyond the scope of the services provided by its program, or disputes or parties that fall outside the limitations outlined in this section, it shall make referrals to private mediators or other mediation programs for which the parties or the dispute may qualify.

B. Such rules shall include:

1. Training and qualifications for mediators providing services in community dispute resolution programs to assure their competence and impartiality;

2. Specific types of disputes which may be handled by a community dispute resolution program, subject to the limitations set forth in this section;

3. Standard procedures for mediation which shall be complied with in all mediation proceedings conducted under a community dispute resolution program;

4. A method by which a court may grant a continuance in contemplation of dismissal on the condition that the defendant in a criminal action or the plaintiff and defendant in a civil action participate in mediation under a community dispute resolution program and a resolution is reached by the parties;

5. A form for a written agreement for participation in mediation through a community dispute resolution program; and

6. A form for a written record of the termination of mediation conducted through a community dispute resolution program.

C. There is hereby created a community dispute resolution program Advisory Board which shall consist of no more than fifteen (15) members, twelve of whom shall be appointed by the Oklahoma Supreme Court from among the following categories: persons from state and local governments, business organizations, the academic community, the law enforcement field, the legal profession, the judiciary, the field of corrections which shall be represented by the Director of the Oklahoma Department of Corrections or designee,

retired citizen organizations, the district attorney profession, consumer organizations, social services agencies, and private mediators. Three (3) members at large shall be appointed by the Oklahoma Bar Association. The term of office of each member shall be for one (1) year and end on June 30 of each year, but all members shall hold office until their successors are appointed and qualified. The Director or his designee shall serve as a nonvoting, ex officio member of the Advisory Board.

The members of the Advisory Board shall receive no compensation for their services, but shall be entitled to any reimbursements to which they may otherwise be entitled from sources other than the Office of the Administrative Director of the Courts.

D. 1. Prior to commencement of any dispute resolution proceedings in a community dispute resolution program, the disputing parties shall enter into a written consent which specifies the method by which the parties shall attempt to resolve the issues in dispute.

~~B. 2.~~ The written consent shall be in a form prescribed by the ~~Administrative Director of the Courts~~ and shall include the following:

~~1. The~~

a. the rights and obligations of all parties pursuant to the provisions of the Dispute Resolution Act~~†~~, and

~~2. The~~

b. the confidentiality of the proceedings.

~~C. 3.~~ If the parties agree to have the resolution reduced to written form, a copy shall be provided to the parties.

E. During the period of the mediation conducted under a community dispute resolution program, any applicable statute of limitation shall be tolled as to the participants. Such tolling shall commence on the date the parties agree in writing to

participate in mediation and shall end on the date mediation is officially terminated by the mediator.

A defendant in a criminal action shall be deemed to have waived the right to a speedy trial during the period of time he is participating in a mediation proceeding.

F. 1. Community dispute resolution programs shall be administered and supervised by the Director to ensure the stability and continuance of centers.

2. Every center shall be operated by an administrator and shall be established on the basis of community need as determined by the Director, subject to the limitations in this section.

3. Each center shall be operated pursuant to a contract with the Director and shall comply with the provisions of the Dispute Resolution Act.

G. 1. a. To establish and maintain community dispute resolution programs, court costs in the amount of Two Dollars (\$2.00) shall be taxed, collected, and paid as other court costs in all civil cases. When dispute resolution services are sought by persons eligible for services pursuant to this section, a fee in the amount of Five Dollars (\$5.00) shall be assessed by the center and collected from the initiating party. If the responding party agrees to participate in mediation of the dispute, a fee of Five Dollars (\$5.00) shall be assessed by the center and collected from the Responding party. The fee of an initiating or responding party shall be waived by the center upon receipt of an affidavit in forma pauper is executed under oath by such party.

b. Except for the court costs and fees provided for in this subsection, dispute resolution services provided

pursuant to this section shall be provided without cost to participants.

2. The court costs and fees provided for in paragraph 1 of this subsection, once collected, shall be transferred by the court clerk to the Director who shall deposit them in the State Judicial Fund.

H. 1. Monies in the Dispute Resolution System Revolving Fund shall be allocated by the Director to eligible centers for dispute resolution programs authorized pursuant to this section.

2. a. The Director shall determine the eligibility of a center for funding on the basis of an application submitted by the center.

b. The application for funding shall state:

(i) a description of the proposed community area of service,

(ii) the cost of the principal components of operation,

(iii) description of available dispute resolution services and facilities within the defined geographic area,

(iv) a description of the applicant's proposed program, by category and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative capacity,

(v) a description of the efforts of cooperation between the applicant and the local human service and criminal justice agencies in dealing with program operations, and

(vi) such additional information as may be required by the Director.

3. The provisions of this section shall not be construed to prohibit dispute resolution centers in existence prior to the

effective date of this act from submitting an application for funding as provided for in paragraph 2 of this subsection.

4. A center shall not be eligible for funds for dispute resolution programs unless it complies with the provisions of the Dispute Resolution Act, and the rules promulgated by the Director.

5. Each center funded pursuant to the provisions of this section, annually, shall provide the Director with a written report containing statistical data regarding operational expenses, the number of referrals, the category or types of cases referred, the number of parties serviced, the number of disputes resolved, the nature of resolution, amount and types of awards, the rate of compliance, and such other data as may be required by the Director.

I. Upon the approval of an application by the Director and at the direction of the Director, monies in the Dispute Resolution System Revolving Fund shall be disbursed to a center for operational costs of approved center programs. The method of reimbursement for dispute resolution program costs shall be specified by the Director pursuant to rules.

J. 1. The Director shall have such power as is necessary to implement the provisions of this section.

2. The Director shall promulgate rules, subject to the approval of the Oklahoma Supreme Court, to effectuate the purposes of this section, which shall include provisions for periodic monitoring and evaluation of center programs.

3. The Director may have such additional personnel as is necessary to implement the provisions of this section.

K. The State Auditor and Inspector, annually, shall inspect, examine, and audit the Dispute Resolution System Revolving Fund and the fiscal affairs of centers.

SECTION 5. REPEALER 12 O.S. 1991, Sections 1805, 1806, 1807, 1808, 1809, as amended by Section 1, Chapter 225, O.S.L. 1994

1810, 1811 and 1813 (12 O.S. Supp. 2000, Section 1809), are hereby repealed.

SECTION 6. This act shall become effective November 1, 2001.

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