

LEGISLATIVE BILL 90

Approved by the Governor June 5, 1991

Introduced by Landis, 46

AN ACT relating to dispute resolution; to adopt the Dispute Resolution Act.
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Dispute Resolution Act.

Sec. 2. The Legislature finds that:

(1) The resolution of certain disputes can be costly and time consuming in the context of a formal judicial proceeding;

(2) Mediation of disputes has a great potential for efficiently reducing the volume of matters which burden the court system in this state;

(3) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(4) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the disputants can discuss their differences through a private informal yet structured process;

(5) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(6) There is a compelling need in a complex society for dispute resolution whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts;

(7) Mediation can increase access of the public to dispute resolution and thereby increase public regard and usage of the legal system; and

(8) Nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes which cannot be resolved by means other than litigation.

Sec. 3. For purposes of the Dispute Resolution Act:

(1) Approved center shall mean a center that

has applied for and received approval from the director under section 9 of this act;

(2) Center shall mean a nonprofit organization or a court-established program which makes dispute resolution procedures available;

(3) Council shall mean the Advisory Council on Dispute Resolution;

(4) Director shall mean the Director of the Office of Dispute Resolution;

(5) Dispute resolution process shall mean a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;

(6) Mediation shall mean the intervention into a dispute by a third party who has no decisionmaking authority and is impartial to the issues being discussed;

(7) Mediator shall mean a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict; and

(8) Office shall mean the Office of Dispute Resolution.

Sec. 4. The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

Sec. 5. The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of eleven voting members. The membership shall include a representative from the Nebraska District Court Judges Association, the Nebraska County Judges Association, and the Nebraska State Bar Association. The council shall be appointed by the Supreme Court or a designee. Nominations shall be solicited from the Nebraska District Court Judges Association, the Nebraska County Judges Association, the Nebraska State Bar Association, the Nebraska Mediation Coalition, the Public Counsel, social workers, mental health professionals, educators, and other interested groups or individuals. The Supreme Court or its

designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

Sec. 6. The initial members of the council shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled in the same manner in which the original appointment was made and shall last for the duration of the term vacated. Appointments to the council shall be made within ninety days after the effective date of this act. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Sec. 7. (1) The council shall advise the director on the administration of the Dispute Resolution Act.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council may appoint task forces to carry out its work. Task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council.

Sec. 8. Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

(1) Make information on the formation of centers available statewide and encourage the formation of centers;

(2) Approve centers which meet requirements for approval;

(3) Develop a uniform system of reporting and collecting statistical data from approved centers;

(4) Develop a uniform system of evaluating approved centers;

(5) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;

(6) Develop guidelines for a sliding scale of fees to be charged by approved centers;

(7) Develop curricula and initiate training sessions for mediators and staff of approved centers and of courts;

(8) Establish volunteer training programs;

(9) Promote public awareness of the dispute

resolution process; and

(10) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act.

Sec. 9. (1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to participate in the dispute resolution process pursuant to the Dispute Resolution Act by submitting an application which includes:

- (a) A plan for the operation of the center;
- (b) The center's objectives;
- (c) The areas of population to be served;
- (d) The administrative organization;
- (e) Record-keeping procedures;
- (f) Procedures for intake, for scheduling, and

for conducting and terminating dispute resolution sessions;

(g) Qualifications for mediators for the center;

(h) An annual budget for the center; and

(i) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

The office may specify additional criteria for approval and for grants as it deems necessary.

(3) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act. Any programs existing on the effective date of this act shall not be included in the act unless they apply and are approved under this section.

Sec. 10. An approved center may use sources of funds, both public and private, in addition to funds appropriated by the Legislature. An approved center may require each party to pay a fee to help defray costs based upon ability to pay. A person shall not be denied services solely because of an inability to pay the fee.

Sec. 11. (1) The following types of cases may be accepted for dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and

disputes within communities;

(b) Disputes concerning child custody and visitation rights and other areas of domestic relations; and

(c) Juvenile offenses and disputes involving juveniles.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Sec. 12. Before the dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Sec. 13. (1) Mediators of approved centers shall have completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics. For disputes involving marital dissolution, mediators of approved centers shall have an additional thirty hours in family mediation. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) An approved center may provide for the compensation of mediators or utilize the services of volunteer mediators or both.

(3) The mediator shall assist the parties in reaching a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(4) The mediator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(5) The mediator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(6) The mediator shall be aware of and

recommend outside resources to the parties whenever appropriate. The mediator shall advise participants to obtain legal review of agreements as necessary.

Sec. 14. All verbal or written information relating to the subject matter of an agreement and transmitted between any party to a dispute and a mediator or the staff of an approved center shall be confidential communications. Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, 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 mediation proceedings unless all the parties consent to a waiver. This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Sec. 15. No mediator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Sec. 16. If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

Sec. 17. During the period of the dispute resolution process, any applicable statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last mediation session. This period shall be no longer than sixty days without consent of all the parties.

Sec. 18. The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

Sec. 19. The Dispute Resolution Act shall apply only to approved centers and mediators of such centers.

Sec. 20. The director shall report annually

to the Chief Justice, the Governor, and the Legislature on the implementation of the Dispute Resolution Act. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, any recommendations to address problems, and a comparison of the cost of mediation and litigation.