

CHAPTER 1121

S.B. No. 1436

AN ACT

relating to alternative dispute resolution procedures.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. The Civil Practice and Remedies Code is amended by adding Title 7 to read as follows:

*TITLE 7. ALTERNATIVE METHODS OF DISPUTE RESOLUTION*

*CHAPTER 154. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES*

*SUBCHAPTER A. GENERAL PROVISIONS*

*Sec. 154.001. DEFINITIONS. In this chapter:*

*(1) "Court" includes an appellate court, district court, constitutional county court, statutory county court, family law court, probate court, municipal court, or justice of the peace court.*

*(2) "Dispute resolution organization" means a private profit or nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative dispute resolution services to the public.*

*Sec. 154.002. POLICY. It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.*

*Sec. 154.003. RESPONSIBILITY OF COURTS AND COURT ADMINISTRATORS. It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy under Section 154.002.*

*[Sections 154.004 to 154.020 reserved for expansion]*

*SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES*

*Sec. 154.021. REFERRAL OF PENDING DISPUTES FOR ALTERNATIVE DISPUTE RESOLUTION PROCEDURE. (a) A court may, on its own motion or the*

*motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:*

*(1) an alternative dispute resolution system established under Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes);*

*(2) a dispute resolution organization; or*

*(3) a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.*

*(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.*

*Sec. 154.022. NOTIFICATION AND OBJECTION. (a) If a court determines that a pending dispute is appropriate for referral under Section 154.021, the court shall notify the parties of its determination.*

*(b) Any party may, within 10 days after receiving the notice under Subsection (a), file a written objection to the referral.*

*(c) If the court finds that there is a reasonable basis for an objection filed under Subsection (b), the court may not refer the dispute under Section 154.021.*

*Sec. 154.023. MEDIATION. (a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.*

*(b) A mediator may not impose his own judgment on the issues for that of the parties.*

*Sec. 154.024. MINI-TRIAL. (a) A mini-trial is conducted under an agreement of the parties.*

*(b) Each party and counsel for the party present the position of the party, either before selected representatives for each party or before an impartial third party, to define the issues and develop a basis for realistic settlement negotiations.*

*(c) The impartial third party may issue an advisory opinion regarding the merits of the case.*

*(d) The advisory opinion is not binding on the parties unless the parties agree that it is binding and enter into a written settlement agreement.*

*Sec. 154.025. MODERATED SETTLEMENT CONFERENCE. (a) A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations.*

*(b) Each party and counsel for the party present the position of the party before a panel of impartial third parties.*

*(c) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.*

*(d) The advisory opinion is not binding on the parties.*

*Sec. 154.026. SUMMARY JURY TRIAL. (a) A summary jury trial is a forum for early case evaluation and development of realistic settlement negotiations.*

*(b) Each party and counsel for the party present the position of the party before a panel of jurors.*

*(c) The number of jurors on the panel is six unless the parties agree otherwise.*

*(d) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.*

*(e) The advisory opinion is not binding on the parties.*

*Sec. 154.027. ARBITRATION. (a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award.*

(b) *If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations.*

*[Sections 154.028 to 154.050 reserved for expansion]*

#### SUBCHAPTER C. IMPARTIAL THIRD PARTIES

*Sec. 154.051. APPOINTMENT OF IMPARTIAL THIRD PARTIES. (a) If a court refers a pending dispute for resolution by an alternative dispute resolution procedure under Section 154.021, the court may appoint an impartial third party to facilitate the procedure.*

(b) *The court may appoint a third party who is agreed on by the parties if the person qualifies for appointment under this subchapter.*

(c) *The court may appoint more than one third party under this section.*

*Sec. 154.052. QUALIFICATIONS OF IMPARTIAL THIRD PARTY. (a) Except as provided by Subsections (b) and (c), to qualify for an appointment as an impartial third party under this subchapter a person must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.*

(b) *To qualify for an appointment as an impartial third party under this subchapter in a dispute relating to the parent-child relationship, a person must complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law.*

(c) *In appropriate circumstances, a court may in its discretion appoint a person as an impartial third party who does not qualify under Subsection (a) or (b) if the court bases its appointment on legal or other professional training or experience in particular dispute resolution processes.*

*Sec. 154.053. STANDARDS AND DUTIES OF IMPARTIAL THIRD PARTIES. (a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.*

(b) *Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.*

(c) *Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.*

*Sec. 154.054. COMPENSATION OF IMPARTIAL THIRD PARTIES. (a) The court may set a reasonable fee for the services of an impartial third party appointed under this subchapter.*

(b) *Unless the parties agree to a method of payment, the court shall tax the fee for the services of an impartial third party as other costs of suit.*

*[Sections 154.055 to 154.070 reserved for expansion]*

#### SUBCHAPTER D. MISCELLANEOUS PROVISIONS

*Sec. 154.071. EFFECT OF WRITTEN SETTLEMENT AGREEMENT. (a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.*

(b) *The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.*

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

Sec. 154.072. *STATISTICAL INFORMATION ON DISPUTES REFERRED.* The Texas Supreme Court shall determine the need and method for statistical reporting of disputes referred by the courts to alternative dispute resolution procedures.

Sec. 154.073. *CONFIDENTIALITY OF COMMUNICATIONS IN DISPUTE RESOLUTION PROCEDURES.* (a) Except as provided by Subsections (c) and (d), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 14, 1987, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on June 1, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendment, on May 29, 1987, by the following vote: Yeas 147, Nays 0, one present not voting.

Approved June 20, 1987.

Effective June 20, 1987.