

Calendar No. 350104TH CONGRESS
2^D SESSION**S. 1224****[Report No. 104-245]**

To amend subchapter IV of chapter 5 of title 5, United States Code, relating to alternative means of dispute resolution in the administrative process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8 (legislative day, SEPTEMBER 5), 1995

Mr. GRASSLEY (for himself, Mr. LEVIN, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

MARCH 27 (legislative day, MARCH 26), 1996

Reported by Mr. STEVENS, from the Committee on Governmental Affairs, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend subchapter IV of chapter 5 of title 5, United States Code, relating to alternative means of dispute resolution in the administrative process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Administrative Dispute
3 Resolution Act of 1995”.

4 **SEC. 2. AMENDMENT TO DEFINITIONS.**

5 Section 571 of title 5, United States Code, is amend-
6 ed—

7 (1) in paragraph (3) by striking out “settle-
8 ment negotiations,”; and

9 (2) in paragraph (8)—

10 (A) in subparagraph (B) by striking out
11 “decision,” and inserting in lieu thereof “dec-
12 sion.”; and

13 (B) by striking out the matter following
14 subparagraph (B).

15 **SEC. 3. AMENDMENTS TO CONFIDENTIALITY PROVISIONS.**

16 (a) **TERMINATION OF AVAILABILITY EXEMPTION TO**
17 **CONFIDENTIALITY.**—Section 574(b) of title 5, United
18 States Code, is amended—

19 (1) in paragraph (5) by adding “or” at the end
20 thereof;

21 (2) in paragraph (6) by striking out “; or” and
22 inserting in lieu thereof a period; and

23 (3) by striking out paragraph (7).

24 (b) **LIMITATION OF CONFIDENTIALITY APPLICATION**
25 **TO COMMUNICATION.**—Section 574 of title 5, United
26 States Code, is amended—

1 (1) in subsection (a) in the matter before para-
 2 graph (1) by striking out “any information concern-
 3 ing”; and

4 (2) in subsection (b) in the matter before para-
 5 graph (1) by striking out “any information concern-
 6 ing”.

7 (c) ~~ALTERNATIVE CONFIDENTIALITY PROCEDURE~~.—Section 574(d) of title 5, United States Code,
 8 is amended—
 9 is amended—

10 (1) by inserting “(1)” after “(d)”; and

11 (2) by adding at the end thereof the following
 12 new paragraph:

13 “(2) For purposes of the application of section
 14 552(b)(3), an alternative confidential procedure under this
 15 subsection may not provide for less disclosure than the
 16 confidential procedures otherwise provided under this sec-
 17 tion.”.

18 (d) ~~EXEMPTION FROM DISCLOSURE BY STATUTE~~.—
 19 Section 574 of title 5, United States Code, is amended
 20 by striking out subsection (j) and inserting in lieu thereof
 21 the following:

22 “(j)(1) A record described under paragraph (2) shall
 23 be specifically exempted from disclosure under section
 24 552(b)(3).

25 “(2) Paragraph (1) applies to any record that—

1 “(A) is—

2 “(i) generated by an agency in a dispute
3 resolution proceeding; or

4 “(ii) initially provided to an agency in a
5 dispute resolution proceeding; and

6 “(B) may not be disclosed under this section.”.

7 **SEC. 4. ADMINISTRATIVE CONFERENCE REPORTING RE-**
8 **QUIREMENTS.**

9 On the date occurring 3 years after the date of the
10 enactment of this Act, the Chairman of the Administrative
11 Conference of the United States shall submit a report to
12 Congress concerning implementation of subchapter IV of
13 chapter 5 of title 5, United States Code (as amended by
14 this Act) relating to alternative means of dispute resolu-
15 tion, by Federal agencies, including, to the extent avail-
16 able, information relating to the costs and benefits of
17 using alternative means of dispute resolution.

18 **SEC. 5. AMENDMENTS TO SUPPORT SERVICE PROVISION.**

19 Section 583 of title 5, United States Code, is amend-
20 ed by inserting “State, local, and tribal governments,”
21 after “other Federal agencies,”.

22 **SEC. 6. AMENDMENTS TO THE CONTRACT DISPUTES ACT.**

23 Section 6 of the Contract Disputes Act of 1978 (41
24 U.S.C. 605) is amended—

1 (1) in subsection (d) by striking out the second
 2 sentence and inserting in lieu thereof: “The contrac-
 3 tor shall certify the claim when required to do so as
 4 provided under subsection (c)(1) or as otherwise re-
 5 quired by law.”; and

6 (2) in subsection (e) by striking out the first
 7 sentence.

8 **SEC. 7. AMENDMENTS ON ACQUIRING NEUTRALS.**

9 (a) **COMPETITIVE REQUIREMENTS IN DEFENSE**
 10 **AGENCY CONTRACTS.**—Section 2304 of title 10, United
 11 States Code, is amended by adding at the end thereof the
 12 following new subsection:

13 “(k) For the purpose of applying subsection
 14 (e)(3)(C), the head of an agency may procure expert serv-
 15 ices without regard to sections 8, 9, and 15 of the Small
 16 Business Act (15 U.S.C. 637, 638, and 644).”.

17 (b) **COMPETITIVE REQUIREMENTS IN FEDERAL CON-**
 18 **TRACTS.**—Section 303(e) of the Federal Property and Ad-
 19 ministrative Services Act of 1949 (41 U.S.C. 253(e)), is
 20 amended by inserting at the end thereof the following new
 21 subsection:

22 “(i) For the purpose of applying subsection (e)(3)(C),
 23 an agency may procure expert services without regard to
 24 sections 8, 9, and 15 of the Small Business Act (15 U.S.C.
 25 637, 638, and 644).”.

1 **SEC. 8. PERMANENT AUTHORIZATION OF THE ALTER-**
 2 **NATIVE DISPUTE RESOLUTION PROVISIONS**
 3 **OF TITLE 5, UNITED STATES CODE.**

4 The Administrative Dispute Resolution Act (Public
 5 Law ~~101-552~~; 104 Stat. 2747; ~~5~~ U.S.C. ~~581~~ note) is
 6 amended by striking out section ~~11~~.

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Administrative Dispute*
 9 *Resolution Act of 1995”.*

10 **SEC. 2. AMENDMENT TO DEFINITIONS.**

11 *Section 571 of title 5, United States Code, is amend-*
 12 *ed—*

13 *(1) in paragraph (3)—*

14 *(A) by striking out “settlement negotia-*
 15 *tions,”; and*

16 *(B) by striking out “and arbitration” and*
 17 *inserting in lieu thereof “use of ombuds, and*
 18 *binding or nonbinding arbitration,”; and*

19 *(2) in paragraph (8)—*

20 *(A) in subparagraph (B) by striking out*
 21 *“decision,” and inserting in lieu thereof “dec-*
 22 *sion.”; and*

23 *(B) by striking out the matter following*
 24 *subparagraph (B).*

1 **SEC. 3. AMENDMENTS TO CONFIDENTIALITY PROVISIONS.**

2 (a) *TERMINATION OF AVAILABILITY EXEMPTION TO*
 3 *CONFIDENTIALITY.*—Section 574(b) of title 5, United States
 4 *Code, is amended—*

5 (1) *in paragraph (5) by adding “or” at the end*
 6 *thereof;*

7 (2) *in paragraph (6) by striking out “; or” and*
 8 *inserting in lieu thereof a period; and*

9 (3) *by striking out paragraph (7).*

10 (b) *LIMITATION OF CONFIDENTIALITY APPLICATION TO*
 11 *COMMUNICATION.*—Section 574 of title 5, United States
 12 *Code, is amended—*

13 (1) *in subsection (a) in the matter before para-*
 14 *graph (1) by striking out “any information concern-*
 15 *ing”;* and

16 (2) *in subsection (b) in the matter before para-*
 17 *graph (1) by striking out “any information concern-*
 18 *ing”.*

19 (c) *ALTERNATIVE CONFIDENTIALITY PROCEDURES.*—
 20 *Section 574(d) of title 5, United States Code, is amended—*

21 (1) *by inserting “(1)” after “(d)”;* and

22 (2) *by adding at the end thereof the following*
 23 *new paragraph:*

24 “(2) *To qualify for the exemption established under*
 25 *subsection (j), an alternative confidential procedure under*
 26 *this subsection may not provide for less disclosure than the*

1 *confidential procedures otherwise provided under this sec-*
 2 *tion.”.*

3 (d) *EXEMPTION FROM DISCLOSURE BY STATUTE.—*
 4 *Section 574 of title 5, United States Code, is amended by*
 5 *striking out subsection (j) and inserting in lieu thereof the*
 6 *following:*

7 “(j) *A dispute resolution communication which is gen-*
 8 *erated by or provided to an agency or neutral, and which*
 9 *may not be disclosed under this section, shall also be exempt*
 10 *from disclosure under section 552(b)(3).”.*

11 **SEC. 4. AMENDMENT TO REFLECT THE CLOSURE OF THE**
 12 **ADMINISTRATIVE CONFERENCE.**

13 (a) *PROMOTION OF ADMINISTRATIVE DISPUTE RESO-*
 14 *LUTIONS.—Section 3(a)(1) of the Administrative Dispute*
 15 *Resolution Act (5 U.S.C. 581 note; Public Law 101–552;*
 16 *104 Stat. 2736) is amended by striking out “the Adminis-*
 17 *trative Conference of the United States and”.*

18 (b) *COMPILATION OF INFORMATION.—*

19 (1) *IN GENERAL.—Section 582 of title 5, United*
 20 *States Code, is repealed.*

21 (2) *TECHNICAL AND CONFORMING AMEND-*
 22 *MENT.—The table of sections for chapter 5 of title 5,*
 23 *United States Code, is amended by striking out the*
 24 *item relating to section 582.*

1 (c) *FEDERAL MEDIATION AND CONCILIATION SERV-*
 2 *ICE.*—Section 203(f) of the Labor Management Relations
 3 Act, 1947 (29 U.S.C. 173(f)) is amended by striking out
 4 “the Administrative Conference of the United States and”.

5 **SEC. 5. AMENDMENTS TO SUPPORT SERVICE PROVISION.**

6 Section 583 of title 5, United States Code, is amended
 7 by inserting “State, local, and tribal governments,” after
 8 “other Federal agencies,”.

9 **SEC. 6. AMENDMENTS TO THE CONTRACT DISPUTES ACT.**

10 Section 6 of the Contract Disputes Act of 1978 (41
 11 U.S.C. 605) is amended—

12 (1) in subsection (d) by striking out the second
 13 sentence and inserting in lieu thereof: “The contractor
 14 shall certify the claim when required to do so as pro-
 15 vided under subsection (c)(1) or as otherwise required
 16 by law.”; and

17 (2) in subsection (e) by striking out the first sen-
 18 tence.

19 **SEC. 7. AMENDMENTS ON ACQUIRING NEUTRALS.**

20 (a) *EXPEDITED HIRING OF NEUTRALS.*—

21 (1) *COMPETITIVE REQUIREMENTS IN DEFENSE*
 22 *AGENCY CONTRACTS.*—Section 2304(c)(3)(C) of title
 23 10, United States Code, is amended by striking out
 24 “agency, or” and inserting in lieu thereof “agency, or

1 to procure the services of an expert or neutral for
2 use”.

3 (2) *COMPETITIVE REQUIREMENTS IN FEDERAL*
4 *CONTRACTS.*—Section 303(c)(3)(C) of the Federal
5 *Property and Administrative Services Act of 1949 (41*
6 *U.S.C. 253(c)(3)(C)), is amended by striking out*
7 *“agency, or” and inserting in lieu thereof “agency, or*
8 *to procure the services of an expert or neutral for*
9 *use”.*

10 (b) *REFERENCES TO THE ADMINISTRATIVE CON-*
11 *FERENCE OF THE UNITED STATES.*—Section 573 of title
12 5, *United States Code, is amended—*

13 (1) *by striking out subsection (c) and inserting*
14 *in lieu thereof the following:*

15 “*(c) In consultation with other appropriate Federal*
16 *agencies and professional organizations experienced in mat-*
17 *ters concerning dispute resolution, the Federal Mediation*
18 *and Conciliation Service shall—*

19 “*(1) encourage and facilitate agency use of alter-*
20 *native means of dispute resolution; and*

21 “*(2) develop procedures that permit agencies to*
22 *obtain the services of neutrals on an expedited basis.”;*
23 *and*

24 (2) *in subsection (e) by striking out “on a roster*
25 *established under subsection (c)(2) or a roster main-*

1 *tained by other public or private organizations, or in-*
 2 *dividual”.*

3 **SEC. 8. ARBITRATION AWARDS AND JUDICIAL REVIEW.**

4 (a) *ARBITRATION AWARDS.*—Section 580 of title 5,
 5 *United States Code, is amended—*

6 (1) *by striking out subsections (c), (f), and (g);*
 7 *and*

8 (2) *by redesignating subsections (d) and (e) as*
 9 *subsections (c) and (d), respectively.*

10 (b) *JUDICIAL AWARDS.*—Section 581(d) of title 5,
 11 *United States Code, is amended—*

12 (1) *by striking out “(1)” after “(b)”;* and

13 (2) *by striking out paragraph (2).*

14 **SEC. 9. PERMANENT AUTHORIZATION OF THE ALTER-**
 15 **NATIVE DISPUTE RESOLUTION PROVISIONS**
 16 **OF TITLE 5, UNITED STATES CODE.**

17 *The Administrative Dispute Resolution Act (Public*
 18 *Law 101–552; 104 Stat. 2747; 5 U.S.C. 581 note) is amend-*
 19 *ed by striking out section 11.*

20 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) *IN GENERAL.*—Subchapter IV of title 5, *United*
 22 *States Code, is amended by adding at the end thereof the*
 23 *following new section:*

1 **“§ 584. Authorization of appropriations**

2 *“There are authorized to be appropriated such sums*
3 *as may be necessary to carry out the purposes of this sub-*
4 *chapter.”.*

5 **(b) TECHNICAL AND CONFORMING AMENDMENT.**—*The*
6 *table of sections for chapter 5 of title 5, United States Code,*
7 *is amended by inserting after the item relating to section*
8 *583 the following:*

“Sec. 584. Authorization of appropriations.”.

Amend the title so as to read “To reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.”.

Calendar No. 350

104TH CONGRESS
2^D SESSION

S. 1224

[Report No. 104-245]

A BILL

To amend subchapter IV of chapter 5 of title 5, United States Code, relating to alternative means of dispute resolution in the administrative process, and for other purposes.

March 27 (legislative day, March 26), 1996

Reported with an amendment and an amendment to the title