

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2578

**FISCAL
NOTE**

BY DELEGATE FOSTER

[Introduced February 17, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §55-19-1, §55-19-2, §55-19-3, and §55-19-4, all relating to creating the
 3 Alternative Dispute Resolution Act; providing parties to a lawsuit with choices for resolving
 4 their dispute that save time and money, when compared to formal court proceedings, by
 5 encouraging alternative dispute resolution (ADR) procedures – limited discovery,
 6 confidential proceedings, and nonjudicial assistance in evaluating the parties' claims.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. ALTERNATE DISPUTE RESOLUTION ACT.

§55-19-1. Short title.

1 This article shall be known and may be cited as the Alternate Dispute Resolution Act.

§55-19-2. Findings by the Legislature.

1 The Legislature finds that it is in the best interest of West Virginians to provide parties to
 2 a lawsuit with choices for resolving their dispute that save time and money, when compared to
 3 formal court proceedings, by encouraging alternative dispute resolution (ADR) procedures –
 4 limited discovery, confidential proceedings, and nonjudicial assistance in evaluating the parties'
 5 claims. The Alternative Dispute Resolution Act permits the parties to choose from a variety of
 6 alternative dispute mechanisms, including early neutral evaluation, mediation, arbitration, mini-
 7 trial, and summary jury trial. Although the parties may elect from an assortment of ADR
 8 procedures, they are not required to do so. This voluntary approach avoids the danger of creating
 9 an additional, and costly, barrier to justice in those instances when ADR is inappropriate.

§55-19-3. Creation of Alternative Dispute Resolution Procedures.

1 (a) The Chief Justice shall establish within each court of general jurisdiction an alternative
 2 dispute resolution program not later than six months after the effective date of this article. Such
 3 program shall include an alternative dispute resolution plan.

4 (b) The alternative dispute resolution plan shall include, but not be limited to:

5 (1) Procedures for limited discovery;

6 (2) Confidentiality of proceedings as to possible subsequent pretrial and trial actions; and

7 (3) The selection, use and payment of nonjudicial personnel, also referred to as neutrals,
8 mediators, or arbitrators, who may conduct alternative dispute resolution procedures.

9 (c) The plan shall also establish standards for determining which cases are appropriate
10 for alternative dispute resolution, considering such factors as whether factual issues predominate
11 over legal issues, whether the cases involve complex or novel legal issues requiring judicial
12 action, and any other factors the court considers relevant.

13 (d) Each judge shall conduct a conference with counsel within 120 days after a complaint
14 is led to review voluntary alternative dispute resolution procedures that may be used in lieu of
15 litigation to resolve the claims in controversy.

16 (e) Each plan shall authorize the parties, if they so choose, to utilize alternative dispute
17 resolution procedures that may be used in lieu of litigation to resolve the claims in controversy.

18 (1) These voluntary alternative dispute resolution procedures shall include, but are not
19 limited to, early neutral evaluation, mediation, outcome-determinative mediation, minitrials,
20 summary jury trials, and arbitration.

21 (2) Outcome-determinative mediation under this section means a procedure in which
22 either a single mediator or a panel of three mediators selected by or under the direction of a court
23 provides the parties with a dollar amount determination that the mediator(s) believe(s) would be
24 awarded if the case were tried.

25 (f) The parties may choose to utilize the alternative dispute resolution procedures and
26 neutrals made available by the court or may, if all parties and the court agree, utilize the service
27 of other neutrals not designated in accordance with the court's alternative dispute resolution plan.

28 (g) Each plan shall also provide that if the parties choose outcome-determinative
29 mediation and in the event a determination is reached:

30 (1) Any party may give notice that it intends to accept that determination, while the other
31 parties remain free to reject the determination and continue with the litigation;

32 (2) A plaintiff in an action seeking monetary relief, who rejects the determination and fails
33 to obtain a final judgment that is at least 10 percent greater than the determination, shall pay the
34 defendant's reasonable costs and reasonable attorneys' fees incurred after the rejection of the
35 determination; and

36 (3) A defendant, in an action seeking monetary relief, who rejects the determination and
37 fails to obtain a final judgment that is at least 10 percent less than the determination, shall pay
38 the plaintiff's reasonable costs and reasonable attorneys' fees incurred after rejection of the
39 determination.

§55-19-4. Implementation.

1 In carrying out its plan, the court is authorized to utilize the volunteer services of non-
2 judicial personnel (also known as neutrals, mediators, or arbitrators) to conduct alternative dispute
3 resolution procedures. The courts are also authorized to establish and pay the amount of
4 compensation, if any, that each neutral shall receive for services rendered in each case.

NOTE: The purpose of this bill is to create the Alternate Dispute Resolution Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.