

SB 193

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SENATE WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



# ENROLLED

SENATE BILL NO. 193

(By Senator BOWMAN, ET AL)



PASSED FEBRUARY 26, 1998

In Effect FROM Passage

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WEST VIRGINIA LEGISLATURE

**ENROLLED**

**Senate Bill No. 193**

(BY SENATORS BOWMAN, DITTMAR, KESSLER,  
SNYDER, WHITE, DEEM AND KIMBLE)

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[Passed February 26, 1998; in effect from passage.]

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AN ACT to amend and reenact chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to creating a commission to study the implementation of alternative dispute resolution programs.

*Be it enacted by the Legislature of West Virginia:*

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fifteen, to read as follows:

**ARTICLE 15. ALTERNATIVE DISPUTE RESOLUTION COMMISSION.**

**§55-15-1. Legislative findings and purpose.**

1 (a) The Legislature hereby finds and declares:

2 (1) That due to growing concern with limits on access to  
3 justice arising from court case backlog, delays and costs,  
4 that it has been beneficial to implement an alternative  
5 dispute resolution program in various circuit courts of our  
6 state and in certain administrative proceedings;

7 (2) That since implementation, these procedures have  
8 proven to be a highly-effective method for resolving  
9 disputes without resorting to adjudicatory measures,  
10 thereby easing the burden of cases pending in the judicial  
11 system;

12 (3) That alternative dispute resolution is continually  
13 changing the perceptions regarding the appropriateness  
14 and effectiveness of court procedures, and that the  
15 continuation and growth of these procedures is important  
16 in enhancing the quality of life for the citizens of this  
17 state;

18 (4) That the effectiveness of the alternative dispute  
19 resolution programs implemented in the state and in other  
20 states has increased but more definition and synthesis is  
21 necessary to better serve the citizens; and

22 (5) That the purpose of this article is to create a commis-  
23 sion, as hereinafter constituted and appointed, to study  
24 various facets of alternative dispute resolution including,  
25 but not limited to, defining the objectives and goals of the  
26 programs, the types of disputes to be resolved, the promul-  
27 gation of a system to ensure appropriate uniformity of  
28 alternative dispute resolution programs statewide, certifi-  
29 cation or licensure of persons engaged in providing  
30 services in alternative methods of resolving disputes and  
31 the structuring and funding of such programs.

32 (b) The Legislature further declares that it recognizes  
33 that the provisions of section 1, article V of the constitu-  
34 tion of West Virginia prohibit any person from exercising  
35 the powers of more than one branch or department of

36 government at the same time; however, it is the express  
37 purpose, intent and finding of the Legislature that those  
38 members of the commission who are members of the  
39 Legislature are acting as such while serving on the  
40 commission and in the furtherance of the Legislature's  
41 inherent right and power to investigate and inquire into  
42 and report on those matters which are legitimately within  
43 its powers, and that since the commission's role and duties  
44 are investigative and reportive in nature, the service upon  
45 the commission by its legislative members is not violative  
46 of nor inimical to the constitutional mandate with respect  
47 to the separation of governmental powers.

**§55-15-2. Alternative dispute resolution commission created;  
composition; appointment of members; chair-  
man.**

1 The West Virginia alternative dispute resolution com-  
2 mission is hereby created. The commission shall consist of  
3 eleven members, who are designated or to be appointed as  
4 follows:

5 (a) The chief justice of the supreme court of appeals of  
6 West Virginia, or his or her designee, shall serve as the  
7 chair of the commission, and shall appoint two additional  
8 members, one of whom is currently serving as a circuit  
9 court judge;

10 (b) The speaker of the House of Delegates and the  
11 president of the Senate, or their respective designee, shall  
12 be members, and the speaker of the House of Delegates  
13 and the president of the Senate shall appoint one addi-  
14 tional member;

15 (c) Two members shall be appointed by the governor  
16 who shall be representative private citizens;

17 (d) The dean of the West Virginia university college of  
18 law shall appoint one faculty member to the commission  
19 who possesses knowledge and experience unique in  
20 alternative dispute resolution processes; and

21 (e) The executive director of the West Virginia state bar.

**§55-15-3. Compensation and expenses of commission members;  
expenses of commission.**

1 (a) Members of the commission shall be reimbursed for  
2 their reasonable and necessary travel and other expenses  
3 actually incurred in connection with the performance of  
4 their duties as members of the commission including, but  
5 not limited to, their attendance at meetings thereof.

6 (b) The expenses of the members of the commission shall  
7 be paid from legislative appropriations.

8 (c) Members of the commission shall receive no other  
9 compensation for their services on or with the commission  
10 other than the reimbursement of expenses as provided in  
11 this section.

12 (d) The president of the Senate and the speaker of the  
13 House of Delegates shall designate a member of the  
14 legislative staff to serve as counsel and reporter to the  
15 commission.

**§55-15-4. Powers and duties of the commission.**

1 The commission shall have the following powers, duties  
2 and responsibilities:

3 (a) To conduct a thorough and comprehensive study into  
4 the various ways and means of financing and structuring  
5 the alternative dispute resolution programs, define the  
6 goals and objectives of alternative methods of resolving  
7 disputes in the state, determine types of disputes to be  
8 included within any alternative dispute resolution pro-  
9 grams, evaluate the advantages of establishing certifica-  
10 tion or licensure of persons engaged in providing services  
11 in alternative methods of resolving disputes and propose  
12 a system to ensure appropriate uniformity of alternative  
13 dispute resolution programs statewide;

14 (b) To request such information and data from any state

15 officer or agency or from any political subdivision of the  
16 state as the commission may deem necessary to assist it in  
17 the performance of its duties and it shall be the duty of all  
18 such officers and agencies to cooperate with and assist the  
19 commission in and about the completion of its studies and  
20 deliberations;

21 (c) To confer with representative citizens, the judiciary,  
22 the legal profession and other groups of the private and  
23 business sectors with respect to all matters deemed  
24 relevant to the duties of the commission;

25 (d) To notify the chair of the commission on the future  
26 of the judiciary so that the commission established herein  
27 may share information with such commission on the  
28 future of the judiciary;

29 (e) To perform every other act necessary or desirable to  
30 carry out any of the other powers, duties or responsibili-  
31 ties enumerated in this article; and

32 (f) To file its final report with respect to its findings and  
33 conclusions, together with any legislation it deems appro-  
34 priate to recommend and as it deems necessary to carry its  
35 findings and conclusions into effect with the president of  
36 the Senate and the speaker of the House of Delegates not  
37 later than the thirtieth day of November, one thousand  
38 nine hundred ninety-eight.

**§55-15-5. Meetings of the commission; quorum.**

1 The commission shall meet at such times and places as  
2 its chair shall deem to be proper and expedient. Such  
3 meetings shall be coordinated with and be in conjunction  
4 with the monthly meeting of the joint committee on  
5 government and finance insofar as the same may be  
6 practicable. Nothing herein shall preclude the commis-  
7 sion from meeting with such frequency or at such times  
8 and places as it may determine. The presence of no less  
9 than six members of the commission shall constitute a  
10 quorum for the purposes of conducting any business.

**§55-15-6. Interpretation of article; termination of commission.**

1 (a) The provisions of this article shall be liberally  
2 construed in order to permit the commission sufficient  
3 latitude for the orderly completion of its studies and  
4 duties.

5 (b) The commission shall cease its existence on the  
6 thirty-first day of December, one thousand nine hundred  
7 ninety-eight.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Ray J. Schooner*  
.....  
Chairman Senate Committee

*Nick Fontana*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Carroll E. White*  
.....  
Clerk of the Senate

*Gregory D. Day*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*W. H. H. H.*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *10th* .....  
day of *March* ....., 1998.

*Jeff D. Underwood*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/6/98

Time 3:00 pm