

2009

State Legislative Update

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Recommended Citation

Ashley Brittain, Sean Dolan, Alicia Hammond, and Meghan Prideaux, *State Legislative Update*, 2009 J. Disp. Resol. (2009)

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State Legislative Update*

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I. STATE LEGISLATIVE FOCUS

A. *Mandatory Mediation in Foreclosure Procedures in Connecticut*

Bill Number: Connecticut Senate Bill 619
Summary: This Bill would call for mandatory notice of mediation in foreclosure proceedings on any residential real property.
Status: The Bill received a favorable report from the Legislative Commissioners' Office (LCO) in early May 2009. Since leaving the LCO, the bill has been tabled for the Senate calendar and is still pending, as of November 6, 2009.

1. *Introduction*

The purpose of this Bill is to provide notice to owners of residential real property owners that mediation with the mortgagee is an option at the onset of foreclosure proceedings.¹ The Bill changes the mechanism by which borrowers are notified of foreclosures; instead of receiving a writ and summons, borrowers receive a notice of mediation, a foreclosure mediation certificate, and a blank appearance form.² Borrowers still receive the writ, summons, and complaint, however.³ The lender must appear at the mediation with the authority to approve a proposed settlement in order to receive a remedy, and no attorney's fees will be awarded until a ninety-day window for mediation has elapsed.⁴ In order to participate in mediation, the property owner must return all forms to the court within the prescribed deadlines.⁵ Enactment of the Bill would triple the amount of mediations in Connecticut in a given year.⁶

The purpose of Senate Bill 619 is consistent with the two-fold purpose of mediation: (1) to empower the parties and (2) to honor and facilitate each party's

* The State Legislative Update is an annual article appearing in the fall edition of the Journal of Dispute Resolution and is compiled and written by Journal members. It is designed to provide readers with a listing of pertinent legislation affecting Alternative Dispute Resolution (ADR). The Update also provides a more detailed look at certain bills because of their importance and/or novelty within the ADR field. If you have comments or suggestions about this feature, please feel free to e-mail the Journal of Dispute Resolution Editorial Board at MUlawjournal@missouri.edu.

1. S. 619 § 1(a)(1), 2009 Gen. Assem., Reg. Sess. (Conn.).

2. *Id.*

3. *Id.*

4. *Id.* § 2(a). The ninety-day window consists of a mandatory sixty-day window that can be extended an additional thirty days for good cause. *Id.*

5. *Id.* § 1(b)(1).

6. *Id.*

determinations in the dispute.⁷ Instead of instituting quick, strict foreclosures and foreclosures by sale, the Bill will allow property owners the opportunity to settle disputes with lenders and preserve the possibility of retaining ownership of their property.

2. The Bill

The Bill would amend the current real property foreclosure statutes and force mortgagees to give notice of the availability of mediation when commencing a foreclosure action.⁸ Under current law, mediation is merely an option for the property owner in foreclosure actions.⁹ While the Bill would purportedly triple the number of mediations in Connecticut, any foreclosures filed after July 1, 2010, will not be subject to this notice provision.¹⁰ The Bill is aimed at facilitating mandatory mediations from the present until the end of fiscal year 2010 (effectively June 30, 2010).¹¹

The Bill specifies that a ninety-day mediation period will be allotted for the property owner in foreclosure actions.¹² Additionally, no remedies, such as strict foreclosures or foreclosure sales, may be instituted before July 1, 2010, without the mediation period expiring or being terminated.¹³

Mediation would be automatic under the Bill—should the property owner elect it—and as such, lenders must attach (1) a notice of foreclosure mediation; (2) a foreclosure mediation certificate; and (3) a blank appearance form to the compliant served upon the property owner.¹⁴

When the court receives the forms from a borrower who meets the filing requirements, the court must schedule a foreclosure mediation date and notify all appearing parties within two business days after receiving the forms.¹⁵ If the forms are not returned by the deadline, the court cannot schedule mediation.¹⁶ However, the Bill allows the court to refer individuals meeting the requirements to the program any time they appear in a foreclosure action.¹⁷

3. Support and Opposition

Deborah Fuller, Legislative Liaison for the State of Connecticut Judicial Branch, noted how enactment of the Bill would improve upon the successful optional mediation already available to property owners.¹⁸ The Judicial Branch was

7. Stephen B. Goldberg and Margaret L. Shaw, *Is the Mediator's Primary Goal to Settle the Dispute?*, 15 No. 2 DISP. RESOL. MAG. 16, 17 (Winter 2009).

8. Conn. S. 619 § 1(a)(1).

9. *Id.*

10. *Id.*

11. *Id.* § 2(a).

12. *Id.*

13. *Id.* § 1(b)(3)(c).

14. *Id.* § 1(a)(1).

15. *Id.* § 1(b)(2).

16. *Id.*

17. *Id.* § 1(b)(3).

18. *An Act Concerning Minor Changes to Foreclosure Procedures: Hearing on S. 619 Before the Senate Banks Committee*, 2009 Gen. Assem., Reg. Sess. (Conn. 2009) (statement of Deborah J. Fuller,

particularly in favor of the revised notification requirements in foreclosure filings.¹⁹ Current law does not mandate mediation, nor does it clearly present the option of mediation to property owners.²⁰ The Bill would remedy this shortcoming and prominently disclose the mediation procedures to property owners in the three required attachments to foreclosure complaints.²¹

The Judicial Branch was also pleased with how the Bill would mandate that, in order to reopen a judgment entered by a court in situations where the parties are still attempting to reach an informal agreement, all appearing parties must agree that the judgment should be opened.²² The Bill would also mandate all defendants be restored to the position they were in prior to the judgment.²³

On February 17, 2009, the Legal Assistance Center of Connecticut (the Center) testified in support of the Bill at the same public hearing.²⁴ Like the Judicial Branch, the Center supported the Bill's changes to the existing mediation notice requirements and the Bill's provision that allows the judgment to be reopened at the parties' agreement, even after the deadline has elapsed.²⁵ In order to extend the Bill's benefits to as many Connecticut residents as possible, the Center recommended the July 1, 2010, sunset date be eliminated.²⁶

The Connecticut Bankers Association also supported the Bill's mediation notification requirements and the reopening provision.²⁷

There has not been any opposition the Bill.²⁸

4. Conclusion

Senate Bill 619 is an attempt to provide more fairness to real property owners in foreclosure proceedings.²⁹ With Connecticut foreclosure rates in 2008 soaring 110% over those from 2005,³⁰ the Bill is seeking to present more opportunities for homeowners to maintain ownership of their property.³¹ Despite strong support, the Bill did not pass during the 2009 legislative session.³²

Legislative Liaison, Conn. State Judicial Branch), available at <http://www.cga.ct.gov/2009/BAdata/Tmy/2009SB-00619-R000217-CT%20Judicial%20Branch-TMY.PDF>.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Minor Changes to the Foreclosure Mediation Program: Hearing on S. 619 Before the Senate Banks Committee*, 2009 Gen. Assem., Reg. Sess. (Conn. 2009) (statement of Raphael L. Podolsky, Legal Assistance Resource Center of Conn.), available at <http://www.cga.ct.gov/2009/BAdata/Tmy/2009SB-00619-R000217-LARC-TMY.PDF>

25. *Id.*

26. *Id.*

27. *Id.*

28. Conn. S. 619 Bill History, available at <http://www.cga.ct.gov/> (enter "SB 619" for the year 2009 under Quick Search; follow "Click for Public Hearing Testimony" hyperlink) (showing no negative testimony against the bill).

29. Conn. S. 619.

30. Harriet Jones, *Facing Foreclosure in Connecticut*, (Connecticut Public Radio broadcast July 10, 2008), available at <http://www.cpb.org/facing-foreclosure-connecticut>.

31. Conn. S. 619.

32. Conn. S. 619 Bill History, available at <http://www.cga.ct.gov/> (enter "SB 619" for the year 2009 under Quick Search).

*B. Creation of a Health Care Authority for All Colorado Residents:
Implementing Arbitration for Resolution of Disputes*

Bill Number: Colorado House Bill 1273
Summary: This Bill would require arbitration for resolution of disputes regarding delay, denial, or modification of health care services provided by Colorado's proposed attempt at universal health care for its residents.
Status: Deemed lost on a third reading as of November 6, 2009.

1. Introduction

In the wake of a nationwide focus on health care reform, the Colorado General Assembly sought to propose a solution to disparate health care coverage in the state.³³ The purpose of House Bill 1273 was to create a health care authority (both a corporate body and political subdivision of the state), which would research, confer, and design a health care system to cover all Colorado residents.³⁴

The Bill was, essentially, a stepping stone to take Colorado one step closer toward health care coverage for all of its residents. The Bill required that the authority create a health care system to recommend to the Colorado General Assembly that provided comprehensive medical benefits to all Coloradans.³⁵ Within the framework of the health care system, the Bill called for a system for filing and arbitrating all grievances regarding delay, denial, or modification of health care services.³⁶ Expedient dispute resolution was a priority, as alternative dispute resolution techniques were required in the Bill.³⁷ This Bill essentially laid the groundwork for the Colorado legislature to adopt more expansive healthcare options for its residents.

2. The Bill

The Colorado legislature attempted to take a gradual approach toward implementing statewide health care for its residents, and this Bill was the first step in that mission.³⁸ The Bill called for the creation of a health care authority that would be responsible for researching and laying the groundwork for a health care system that would eventually recommended the new statewide system to the Colorado General Assembly.³⁹ The authority would be primarily self-governing and have free range to create the system; however, the Bill required the authority to implement dispute resolution methods within the framework of the system.⁴⁰

33. See H.R. 1273, 67th Gen. Assem., Reg. Sess. (Col. 2009).

34. *Id.* § 25.5-9-105.

35. *Id.*

36. *Id.* § 25.5-9-106(1)(o).

37. *Id.* § 25.5-9-106(1)(p).

38. *Id.*

39. *Id.*

40. *Id.* §§ 25.5-9-106(1)(o)-(p).

Efficiency and approaching grievances and problems proactively could be accomplished by requiring alternative dispute resolution techniques.⁴¹

The Bill called for the health care authority's system to implement mandatory arbitration of grievances regarding delay, denial, or modification of health care services.⁴² Specifics as to how the arbitration program should function were not included within the text of the Bill.⁴³

Additionally, the Bill called for a proactive dispute resolution system that measured the quality of health care services provided under the system, investigated reports of poor quality of health care services, and developed an efficient and fair dispute resolution system.⁴⁴ The Bill made no mention of remedies of law available to Colorado residents.⁴⁵ It is clear the Colorado Assembly wanted efficient and confidential resolution of grievances, and the vehicle to provide this was arbitration.

3. Support and Opposition

The Assembly never had a public hearing on the Bill.⁴⁶ The Bill was deemed lost on its third reading on November 6, 2009.⁴⁷ However, it previously received favorable reports from each of the Committees that considered it.⁴⁸ Though the recommendations from the Committees were favorable, the Bill was still deemed lost.⁴⁹ Throughout the three readings in the Assembly, the Bill remained intact in the author's original format—it was never amended.⁵⁰ As all costs associated with the authority were to be covered by grants, gifts, and donations, the Bill was accompanied by a fiscal note assessing costs to the State Fund at \$0 for the formation of the authority.⁵¹

There was no publically available, expressed opposition to the Bill providing an explanation as to why it was unsuccessful in the Assembly.⁵²

41. *Id.*

42. *Id.* § 25.5-9-106(1)(o).

43. *See* Col. H.R. 1273.

44. *Id.* § 25.5-9-106(1)(p).

45. *See* Col. H.R. 1273.

46. *See id.* Colorado's legislative history Web site does not mention a public hearing for the bill, available at <http://www.leg.state.co.us/Clics/Clics2009A/csl.nsf/MainBills?openFrameset> (enter "1273" in the search box).

47. *Id.* Colorado's legislative history for the bill indicates the bill was deemed lost on its third-reading, available at <http://www.leg.state.co.us/Clics/Clics2009A/csl.nsf/MainBills?openFrameset> (enter "1273" in the search box).

48. *Id.*, available at <http://www.leg.state.co.us/Clics/Clics2009A/csl.nsf/MainBills?openFrameset> (enter "1273" in the search box; then follow the "CR1" and "CR2" hyperlinks under "Committee Reports").

49. *See id.*

50. *Id.* (enter "1273" in the search box; then follow the "All Versions" hyperlink under "All Bill Versions") (indicating that no amendments have been made to the bill).

51. *Id.*, available at <http://www.leg.state.co.us/Clics/Clics2009A/csl.nsf/MainBills?openFrameset> (enter "1273" in the search box; then follow the "FR1," "FR2," and "FR3" hyperlinks under "Fiscal Note").

52. *See* Col. H.R. 1273.

4. Conclusion

Though House Bill 1273 did not make it past a third reading in the Colorado Assembly, the favorable response it received from the Assembly's Committee on Business Affairs and Labor and the Committee on Appropriations could inspire and assist other states in drafting similar legislation for the creation of health care authorities aimed at recommending all-inclusive health care coverage programs for their citizens.

C. Using Alternative Dispute Resolution Procedures to Aid in Domestic Conflict: Indiana House Bill 1240,⁵³ Michigan Senate Bill 99,⁵⁴ Michigan Senate Bill 101,⁵⁵ Minnesota House Bill 542⁵⁶

Bill Numbers:	Indiana House Bill 1240, Michigan Senate Bill 99, Michigan Senate Bill 101, Minnesota House Bill 542
Summary:	These Bills provide various levels of requirement and enforcement for the use of alternative dispute resolution processes as a means of conflict resolution within the family and domestic law context.
Status:	Indiana (in Committee on Family, Children and Human Affairs); Michigan Senate Bill 99 (in House for second reading as of November 4, 2009); Michigan Senate Bill 101 (in Committee on Families and Children's Services); Minnesota (in Committee on Civil Justice).

1. Introduction

Alternative dispute resolution (ADR) procedures are enjoying increased use in the area of family and domestic relations disputes because of their emphasis on cooperation and negotiation.⁵⁷ Within the context of divorce, these measures are ideal where the parties must move forward with their parenting obligations long after the divorce is finalized.⁵⁸ Additionally, the private nature of ADR proceedings, which permit the parties to devise their own rules, procedures, and conditions, makes it further amenable to the family dispute setting.⁵⁹

Many scholars advocate for state laws requiring attorneys to inform their clients about ADR procedures before proceeding to trial; they argue that placing the burden on attorneys to inform their clients about ADR will neither prove to be burdensome nor impose unnecessary obligations on the attorney.⁶⁰ Instead, within

53. H.R. 1240, 116th Gen. Assem., Reg. Sess. (Ind. 2009).

54. S. 99, 95th Leg., Reg. Sess. (Mich. 2009).

55. S. 101, 95th Leg., Reg. Sess. (Mich. 2009).

56. H.R. 542, 86th Leg., Reg. Sess. (Minn. 2009).

57. Thomas D. Vu, *Going to Court as a Last Resort: Establishing a Duty for Attorneys in Divorce Proceedings to Discuss Alternative Dispute Resolution with Their Clients*, 47 FAM. CT. REV. 586, 587 (2009).

58. *Id.*

59. Kirk W. Schuler, *ADR's Biggest Compromise*, 54 DRAKE L. REV. 751, 779 (2006).

60. Vu, *supra* note 57, at 587.

the family and domestic relations dispute context, mandatory disclosure of ADR procedures will help minimize the harmful impact such familial disputes have on children, both from a short-term and long-term standpoint.⁶¹ Further, ADR procedures will help families become more cohesive while moving forward as a whole.⁶²

While not all states have chosen to do so, many have attempted to enact such laws requiring ADR procedures to resolve certain disputes, such as divorce, child custody, or child support.⁶³ “Over the past two decades there has been a paradigm shift in the way the legal system handles most family disputes—particularly disputes involving children.”⁶⁴ This paradigm shift has replaced the law-oriented and judge-focused adversary model with a more collaborative, interdisciplinary, and forward-looking family dispute resolution regime.⁶⁵

This new and improved regime is accomplished through ADR proceedings, such as negotiation, mediation, and arbitration. Social science suggests children’s adjustment to divorce and separation depends significantly on their parents’ behavior during and after the separation process; the higher the levels of parental conflict to which children are exposed, the more negative the effects of family dissolution.⁶⁶ Thus, ADR procedures are beneficial within the family law context because they not only facilitate peaceful and negotiated agreements between family members and spouses, but they also help the parties properly manage their conflict while protecting the innocent children involved.

These bills require and encourage a variety of solutions for resolving family and domestic relations conflicts, including mandatory mediation programs and alternative dispute resolution procedures for resolving disputes concerning child custody, as well as parenting and grandparenting time.

2. Indiana House Bill 1240

Representative Vanessa Summers introduced Indiana House Bill 1240 on January 12, 2009.⁶⁷ The Bill proposes to add a subsection to a current provision of the Indiana Code, which concerns court-ordered mediation.⁶⁸ The proposed Bill would not alter the current law, which provides as follows:

When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty . . . days after the mediation order is entered. However, the sixty . . . day period may be extended by the court upon the court’s

61. *Id.*

62. *Id.*

63. *See, e.g.*, H.R. 1240, 116th Gen. Assem., Reg. Sess. (Ind. 2009); S. 99, 95th Leg., Reg. Sess. (Mich. 2009); S. 101, 95th Leg., Reg. Sess. (Mich. 2009); H.R. 542, 86th Leg., Reg. Sess. (Minn. 2009).

64. Jana B. Singer, *Dispute Resolution and the Post-Divorce Family: Implications of a Paradigm Shift*, 47 *FAM. CT. REV.* 363, 363 (2009).

65. *Id.*

66. *Id.* (summarizing ROBERT E. EMERY, *RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY AND MEDIATION* 205 (1994)).

67. Ind. H.R. 1240.

68. *See* IND. CODE § 31-15-9.4-2 (2009).

own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing.⁶⁹

However, the Bill proposes adding subsection (b) to modify the requirements and responsibilities of the mediator upon completion of divorce mediation.⁷⁰ Subsection (b) of Indiana House Bill 1240 states, "Upon completion of the mediation process, the mediator shall prepare and promptly file: (1) the mediation report; (2) the settlement agreement, if any; and (3) any proposed dissolution decree."⁷¹

Following introduction, the Bill was referred to the Committee on Family, Children & Human Affairs on January 12, 2009, where it remains.⁷²

3. Michigan Senate Bill 99

Senator Mark Jansen introduced Michigan Senate Bill 99 on January 28, 2009.⁷³ The Bill proposed to amend the Friend of the Court (FOC) Act,⁷⁴ which requires the FOC office to provide domestic relations mediation to assist the parties in voluntarily settling a dispute concerning child custody or parenting time.⁷⁵

Under the proposed Bill, the FOC would have to provide ADR procedures under a plan approved by the chief judge and filed with the State Court Administrative Office.⁷⁶ The Bill also requires the procedures be consistent with standards established by the State Court Administrative Office under the supervision of the Supreme Court of Michigan.⁷⁷ Further, the plan would include minimum qualifications and training requirements for ADR providers and a designation of matters subject to ADR by various means.⁷⁸

Michigan Senate Bill 99 replaces references to "domestic relations mediation" with "alternative dispute resolution" throughout the Act,⁷⁹ and refers to "providers of alternative dispute resolution" rather than "domestic relations mediators."⁸⁰ Under the Bill, "alternative dispute resolution" would mean a process established under the Act by which the parties are assisted in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter.⁸¹

The Bill also changes the minimum qualifications for those offering ADR services.⁸² Michigan Senate Bill 99 requires that providers of ADR have knowledge of the state court system and procedures used in domestic relations matters,

69. Ind. H.R. 1240 § 2(a).

70. *Id.* § 2(b).

71. *Id.*

72. Ind. H.R. 1240 Action List, available at <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getActions&doctype=HB&docno=1240>.

73. S. 99, 95th Leg., Reg. Sess. (Mich 2009).

74. *Id.*

75. MICH. COMP. LAWS §§ 552.501-552.535 (2009).

76. Mich. S. 99 § 13(1).

77. *Id.*

78. *Id.* §§ 13(1), (4).

79. *Id. passim.*

80. *Id.* § 19(3)(b).

81. *Id.* § 2(a).

82. *Id.* § 13(4).

have knowledge of other resources in the community that parties can be referred for assistance, and have any other qualifications as prescribed by the State Court Administrative Office under the supervision and direction of the supreme court.⁸³

After introduction, Michigan Senate Bill 99 was referred to the Committee on Families and Human Services who reported favorably on the bill without amendments on February 5, 2009.⁸⁴ On February 10, 2009, the Bill passed the Senate with 37 yes votes, zero no votes, zero excused votes, and zero absent votes.⁸⁵ The Bill was then referred to the House Committee on Families and Children's Services on February 10, 2009.⁸⁶ Currently, the Bill has been referred to a second reading in the House.⁸⁷ Interestingly, Michigan Senate Bill 99 does not take effect unless Michigan Senate Bill 101 is enacted into law, and vice versa.⁸⁸

4. Michigan Senate Bill 101

Senators Mark Jansen and Bill Hardiman introduced Michigan Senate Bill 101 on January 28, 2009.⁸⁹ The Bill proposed to amend the Child Custody Act (Act),⁹⁰ which permits a child's grandparent to seek a grandparenting time order under certain circumstances by filing a motion or complaint with the circuit court.⁹¹

In order to give deference to the decisions of fit parents, there is the presumption "that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's physical, mental, or emotional health."⁹² In order to rebut this presumption, a grandparent must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates such a risk.⁹³

Under the current Act, if the court determines that a grandparent has successfully rebutted this presumption, the court may refer the grandparent's complaint or motion for grandparenting time to domestic relations mediation as provided by the supreme court rule.⁹⁴ However, the Bill would amend the Act to refer to "alternative dispute resolution," rather than "domestic relations mediation," in such provisions regarding a motion for grandparenting time.⁹⁵

Following introduction (similar to Michigan Senate Bill 99), Michigan Senate Bill 101 was referred to the Committee on Families and Human Services who reported favorably on the bill without amendments on February 5, 2009.⁹⁶ On

83. *Id.*

84. Mich. S. 99 Bill History, available at <http://www.legislature.mi.gov> (enter "99" in the search box labeled "Bill Number" and scroll to bottom of the page).

85. *Id.*

86. *Id.*

87. *Id.*

88. Mich. S. 99, enacting § 1.

89. S. 101, 95th Leg., Reg. Sess. (Mich. 2009).

90. *Id.*

91. MICH. COMP. LAWS § 722.27b (2009).

92. Mich. S. 101 § 7b(4)(B).

93. *Id.*

94. MICH. COMP. LAWS. § 722.27b(7).

95. Mich. S. 101 § 7b(7).

96. Mich. S. 101 Bill History, available at <http://www.legislature.mi.gov> (enter "101" in the search box labeled "Bill Number" and scroll to bottom of the page).

February 10, 2009, the Bill also passed the Senate with 37 yes votes, zero no votes, zero excused votes, and zero absent votes.⁹⁷ The Bill was then referred to the House Committee on Families and Children's Services on February 10, 2009, where it remains along with Michigan Senate Bill 99.⁹⁸

5. *Minnesota House Bill 542*

Representatives Steve Smith, Greg Davids, Bud Normes, Randy Demmer, Mary Kiffmeyer, Dean Urdahl, and Ron Shimanski sponsored Minnesota House Bill 542 during the 2009 legislative session.⁹⁹ The Bill proposed to amend the Minnesota Statutes in order to expand grandparent visitation rights, specify particular procedures, and require mediation.¹⁰⁰

First, the proposed Bill would amend section 257C.08, subdivision 1 of the Minnesota Statutes¹⁰¹ to read:

Grandparent visitation. Upon request of a grandparent or great-grandparent of an unmarried minor child, the district court may grant reasonable visitation rights on behalf of the child and the grandparent or great-grandparent upon finding that visitation rights would be in the best interests of the child and would not interfere with the parent and child relationship. The court shall consider the amount of personal contact between the grandparents or great-grandparents and the child prior to the application.¹⁰²

Second, Minnesota House Bill 542 would also amend section 257C.08 of the Minnesota Statutes to add subdivision 4(a) relating to the mediation process now required. Subdivision 4(a) would allow a person to seek visitation rights by filing a motion with the court during the child custody or visitation proceeding, or if no other proceeding exists, by filing a petition with the district court in the county where the child resides.¹⁰³ However, if it is apparent on the face of the motion or petition that visitation is contested; the court must order the parties to mediation.¹⁰⁴

Finally the proposed Bill would repeal two subdivisions of section 257C.08 of the Minnesota statutes:¹⁰⁵ a subdivision regarding family court proceedings¹⁰⁶ and a subdivision regarding whether or not the child resided with the grandparents.¹⁰⁷

97. *Id.*

98. *Id.*

99. H.R. 542, 86th Leg., Reg. Sess. (Minn. 2009).

100. *Id.*

101. MINN. STAT. § 257C.08 (2009).

102. Minn. H.R. 542 §(1).

103. *Id.* § 2(a)(1).

104. *Id.* § 2(a)(2).

105. *Id.* § 3.

106. MINN. STAT. § 257C.08(2).

107. *Id.* § 257C.08(3).

Following introduction, the Bill was referred to the Civil Justice Committee on February 5, 2009, where it remains.¹⁰⁸

6. Conclusion

Family and domestic relations disputes can have an especially harmful effect on children. However, due to the fact that conflict between family members and spouses is likely to continue as a result of divorce and other familial disputes, it is important that people learn how to resolve conflict while responding to the situation appropriately and responsibly. Utilizing ADR procedures, such as negotiation, mediation, and arbitration, allows parties not to only address the underlying causes of the dispute, but also to resolve the conflict in a way that positively impacts all parties involved, including the children.

While there exists some government support for the beneficial aspects of ADR procedures within the family law context, it seems that ADR should be more prevalent within the realm of family and domestic relations disputes than it is currently. The Bills discussed above hopefully will have two beneficial aspects. First, the Bills may encourage further government support for ADR within the family law context. Second, the Bills may bring to legislators' attention the beneficial aspects of ADR processes to properly resolve familial conflict for the sake of all parties. It is the ultimate goal that other states will realize the benefits of ADR procedures and propose similar Bills in order to effectively resolve disputes between family members and spouses, while protecting the innocent children who may be involved.

*D. Arbitrator Disclosure and the Culture of Transparency in the World of Arbitration: Montana House Bill 322*¹⁰⁹

Bill Numbers:	Montana House Bill 322
Summary:	This Bill requires arbitrators to make certain disclosures of possible conflicts and other issues which may influence decisions.
Status:	Signed by Governor on April 24, 2009.

1. Introduction

A cornerstone of the arbitration process is the firm belief that decisions made by the arbitrator will be free from bias, corruption, and the signs of impropriety.¹¹⁰ Without the foregoing assurances, the goals of arbitration become "irrelevant" to the process itself.¹¹¹ Courts across the country have procedural rules in place for situations where judges may have conflicts of interest with the parties to the suit.

108. Minn. H.R. 542 Bill History, available at <http://www.leg.state.mn.us/leg/legis.asp> (enter "542" as the "Bill Number"; then follow "Status of Bill in the House" hyperlink).

109. H.R. 322, 61st Legis., 2009 Reg. Sess. (Mont. 2009).

110. Linden Fry, *Letting the Fox Guard the Henhouse: Why the Fifth Circuit's Ruling in Positive Software Solutions Sacrifices Procedural Fairness for Speed and Convenience*, 58 CATH. U. L. REV. 599, 600-601 (Winter 2009).

111. *Id.* at 601.

Presumably, these rules are in place to assure the parties involved that the decisions of the judge will be made with only the law in mind, free from outside influence. This concept is mirrored in the field of arbitration, where the importance placed on unbiased decision-makers is reflected in a number of ethics codes for arbitrators.¹¹²

The National Arbitration Forum (NAF) provides a number of guidelines for arbitrators, stating that arbitrators should treat parties equally, should not be influenced by outside pressure, and should disclose relationships that they may have with any party involved.¹¹³ Furthermore, the Code of Ethics of the American Arbitration Association and the American Bar Association provides similar language directing arbitrators to disclose relationships that they may have with a party.¹¹⁴

Even the international community has taken note of the vital importance of neutral arbitrators and the need for disclosure.¹¹⁵ The International Bar Association has developed guidelines that help arbitrators determine what must be disclosed before a nominee can accept the position of arbitrator. A likely influence on the foregoing rules is the Federal Arbitration Act,¹¹⁶ which states that an arbitration award may be vacated "where there was evident partiality or corruption in the arbitrators, or either of them."¹¹⁷ Arbitration is often used by parties because it is a faster, cheaper, and more efficient way to resolve disputes. However, if awards must continually be appealed and vacated due to biased arbitrators, the primary purposes for arbitration are negated.

After identifying the common theme among many of the ethical guidelines for arbitrators, it comes as no surprise that states have begun to statutorily prescribe disclosure by arbitrators. If arbitration is going to continue to grow as an alternative method of dispute resolution, methods of control should be in place to provide confidence in those engaging in the process. Participants should be assured that the outcome will be reliable and free from outside influence. Montana House Bill 322 attempts to further this ongoing theme of disclosure by arbitrators and arbitral organizations. This Bill sets forth provisions that allow parties to receive information regarding the arbitrator or the organization providing the arbitration. The exchange of this information will hopefully result in less biased decisions, fewer appeals for vacatur of awards, and a more efficient method of dispute resolution.

112. David Allen Larson, *Conflicts of Interest and Disclosure: Are We Making a Mountain Out of a Mole-Hill?*, 49 S. TEX. L. REV. 879, 901 (Summer 2008).

113. *Id.*

114. *Id.*

115. Claudia T. Salomon et al., *Arbitrator's Disclosure Standards: The Uncertainty Continues*, 63 DISP. RESOL. J. 76 (August-October 2008).

116. 9 U.S.C. §§ 1-16 (2002).

117. *Id.* § 10.

2. Requiring Appointed Neutral Arbitrators to Disclose Conflicts of Interest: Montana House Bill 322

Montana House Bill 322 was introduced by Representative Anders Blewitt, Representative Ken Peterson, and Senator Jim Shockley on January 21, 2009.¹¹⁸ The Bill proposes that anyone nominated or appointed as neutral arbitrator is to disclose any possible conflicts of interest.¹¹⁹ Additionally, the Bill provides that the award may be vacated for failure to disclose such conflicts.¹²⁰ Lastly, the bill proposes to amend sections 27-5-211 and 27-5-312 of the Montana Code.¹²¹

The Montana Bill proposes a number of changes in the way arbitration disclosures are handled.¹²² First, the Bill puts the determination of bias upon the parties to the arbitration in section 3 of the Bill, in which it states that the arbitrator is required to disclose facts that may give rise to a *reasonable doubt* that the arbitrator can perform without impartiality.¹²³ The Bill then sets forth a number of criteria that may guide the neutral arbitrator in his attempt to release all potential information that may lead to accusations of unfairness and bias.¹²⁴

The Bill states that arbitrators shall reveal the following information upon nomination or appointment: first, the arbitrator shall disclose all matters that would be grounds for the disqualification of a judge pursuant to Montana Code;¹²⁵ second, the arbitrator must disclose whether they have been employed by any of the parties in the past five years;¹²⁶ third, the arbitrator must disclose the names of the parties of arbitrations commenced after October 1, 2009, in which the arbitrator has participated as a party arbitrator or attorney;¹²⁷ lastly, beginning on October 1, 2014, the arbitrator must begin to disclose an abundance of information regarding past arbitrations, such as parties, awards, monetary damages, and any attorney-client relationships engaged in with the participating parties.¹²⁸

The Bill then provides a procedure to be followed by arbitrators when making the disclosures.¹²⁹ Upon receiving the nomination or appointment to be a neutral arbitrator, the person must make the requisite disclosures within ten days of notice.¹³⁰ If the arbitrator fails to properly disclose or follow procedure, the parties may move that the award be vacated in district court.¹³¹ The grounds for vacatur set forth in the newly amended section 27-5-211 of the Montana Code nearly mir-

118. H.R. 322, 61st Leg., Reg. Sess. (Mont. 2009).

119. *Id.* § 1(3).

120. *Id.* § 3 (codified at MONT. CODE ANN. § 27-5-312(1)(f) (2009)).

121. *Id.* §§ 2, 3.

122. The short title of this bill is the “Fairness in Arbitration Act.” *Id.* The bill binds neutral arbitrators—those appointed by a court when the arbitration agreement does not provide a means for their appointment or the means provided fails—to its provisions. *Id.* § 1(2).

123. *Id.* § 1(3) (emphasis added).

124. *Id.* §§ 1(4)(a)-(c).

125. *Id.* § 1(4)(a).

126. *Id.* § 1(4)(b).

127. *Id.* § 1(4)(c)(i)(A).

128. *Id.* §§ 1(4)(c)(i)(B), 1(4)(c)(ii). The bill also requires an appointed arbitrator to disclose the parties to and the results of all arbitration proceedings in which the arbitrator served as a neutral and which began after October 1, 2009. *Id.* § 1(4)(d)(i)(A)

129. *Id.* § 1(6).

130. *Id.*

131. *Id.* § 3 (codified at MONT. CODE ANN. § 27-5-312(1)(f)).

ror those set forth in the Federal Arbitration Act.¹³² A party to an arbitration has ninety days after receiving a copy of the award to file for vacatur, unless it is contended that the award as procured on the grounds of corruption, fraud, or undue means.¹³³

3. Conclusion

In passing a number of ethics codes for arbitrators, legislative bodies are attempting to strike a balance between efficiency and effectiveness. The main benefit of arbitration is that it is a cheap, efficient, deregulated method to resolve disputes between parties. Parties who pursue arbitration are awarded with an expedited process that saves both time and money that would likely be put towards court costs and attorney's fees, while still obtaining a reasoned decision by an educated arbitrator.

However, along with deregulation comes the danger that certain arbitrators may not be as unbiased as a party may prefer. Failure to properly regulate arbitrators and arbitral organizations may lead to arbitrators with biases and favoritisms that could hinder justice, which is what Montana House Bill 322 addresses. The central theme of this Bill seems to support the proposition that disclosure by arbitrators will make the system fairer to all parties involved. If true, Montana will have taken steps in a positive direction.

E. Rhode Island House Bill 5589: Municipal Employees' Arbitration

Bill Number:	Rhode Island House Bill 5589
Summary:	This Bill would make several procedural and substantive changes in municipal employees' grievance and interest in arbitration laws. The Bill would also establish specific factors to be considered by arbitration boards when deciding an arbitrator's central case.
Status:	House Labor Committee recommended the Bill be held for further study on March 24, 2009.

1. Introduction

Rhode Island House Bill 5589 provides for binding arbitration as the method to exercise municipal employees' rights granted through collective bargaining.¹³⁴ The Bill's purpose is to provide an alternative method to settle disputes where employees must, as a matter of public policy, be denied the usual right to strike.¹³⁵

The Bill would make several procedural and substantive changes in municipal employee's grievance laws. The Bill, as amended, establishes continuance of

132. Compare MONT. CODE ANN. § 3.27-5-312(1) with 9 U.S.C. § 10.

133. Mont. H.R. 322 § 3 (codified at MONT. CODE ANN. § 27-5-312(3)).

134. H.R. 5589, 2009 Gen. Assem., Reg. Sess. § 1 (R.I. 2009) (to be codified as R.I. GEN. LAWS § 28-9.4-4).

135. *Id.* (to be codified as R.I. GEN. LAWS § 28-9.4-1).

contractual provisions, specific factors to be considered by the arbitration board when arriving at a decision, and liability for attorney fees.¹³⁶

House Bill 5589 was introduced on February 25, 2009, at which point it was referred to the House Labor Committee.¹³⁷ On March 24, 2009, the House Labor Committee recommended the Bill for further study.¹³⁸ No action has been taken on the Bill since.¹³⁹

2. The Bill

The Bill provides for final and binding arbitration of disputes arising out of the collective bargaining process “concerning hours, wages, rates of pay, and all other terms and conditions of municipal employment.”¹⁴⁰ Section 2 of the Bill amends title 28, chapter 9.4 of the General Laws of Rhode Island to include provisions outlining the continuance of contractual provisions; factors to be considered by the arbitration board; and payment of attorneys’ fees and costs.¹⁴¹

The addition of section 10.1 would establish that all contractual provisions contained in a collective bargaining agreement entered into pursuant to chapter 9.4 would continue in any subsequent collective bargaining agreement unless either party proposed a contractual change within a thirty-day prescribed period.¹⁴²

The addition of section 12.1 would establish specific factors to be considered by the arbitration board when deciding the dispute between the municipal employee and employer.¹⁴³ The factors provide arbitrators with a means to come to a prompt, peaceful and just settlement of wage, rate of pay, hours, or terms and conditions of employment disputes.¹⁴⁴ The factors include comparisons of wage rates or hourly conditions of employment of the municipal employer in question with prevailing wage rates or hourly conditions of (1) employment of skilled employees of the building trades and industry in the local operating area involved; (2) employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved; and (3) employment of municipal employers in cities or towns of comparable size.¹⁴⁵ Arbitrators should also compare the peculiarities of employment in regards to other trades or professions, such as the hazards of employment, physical, educational and mental qualifications, and job training and skills.¹⁴⁶ Finally, arbitrators should consider how public interest and welfare will be affected by the employment decision.¹⁴⁷

136. *Id.* § 2 (to be codified as R.I. GEN. LAWS §§ 28-9.4-10.1, -12.1, -13.1).

137. R.I. H.R. 5589 Status Report, *available at* <http://dirac.rilin.state.ri.us/BillStatus/webclass1.asp> (follow “Bill Status/History” hyperlink; enter “5589” under “Bills;”; click “Enter”).

138. *Id.*

139. *Id.*

140. R.I. H.R. 5589 § 1 (to be codified as R.I. GEN. LAWS § 28-9.4-1).

141. *Id.* § 2 (to be codified as R.I. GEN. LAWS §§ 28-9.4-10.1, -12.1, -13.1).

142. *Id.* (to be codified as R.I. GEN. LAWS § 28-9.4-10.1).

143. *Id.* (to be codified as R.I. GEN. LAWS § 28-9.4-12.1).

144. *Id.*

145. *Id.* (to be codified as R.I. GEN. LAWS §§ 28-9.4-12.1(1)-(3)).

146. *Id.*

147. *Id.*

The addition of section 14.11 would permit a court, tribunal, or forum to force a party against whom the final decision was adverse to pay reasonable attorneys' fees and costs to the successful party where it finds the appeal or petition was frivolous.¹⁴⁸

3. Conclusion

This Bill is consistent with the use of ADR as cost-effective and efficient means of solving disputes. While the Bill seeks to limit disputes between municipal employees and employers, the bill provides for specific factors for an arbitrator to consider when making a decision if disputes do arise. These factors will provide better guidance to arbitrators when deciding municipal employment disputes.

F. Texas House Bill 1083: Prohibiting a Court from Ordering Mediation Unless Agreed to by the Parties

Bill Number: Texas House Bill 1083
Summary: This Bill would prohibit a court from ordering mediation in an action that was subject to the Federal Arbitration Act unless the parties to the action agreed to mediate.
Status: Signed by governor on June 19, 2009.

1. Introduction

Texas House Bill 1083 amended the Civil Practice and Remedies Code.¹⁴⁹ The amended code now prohibits a court from ordering mediation in an action that is subject to the Federal Arbitration Act, except as provided by agreement of the parties.¹⁵⁰ The purpose of the Bill is to prevent courts from using mediation orders to raise the costs and burdens of confirming awards that, under federal law, should be relatively simple to confirm.¹⁵¹

House Bill 1083 was introduced on February 24, 2009, at which point it was referred to the Judiciary and Civil Jurisprudence Committee.¹⁵² After quickly passing through both the House and Senate, House Bill 1083 was signed by the governor on June 19, 2009.¹⁵³ The Bill was prospectively effective that same day.¹⁵⁴

148. *Id.* (to be codified as R.I. GEN. LAWS § 28-9.4-14.11).

149. H.R. 1083, 81st Leg. Reg. Sess. § (Tex. 2009) (codified at TEX. CIV. PRAC. & REM. § 154.021(c) (Vernon 2009)).

150. *Id.*

151. Tex. H.R. 1083, Bill Analysis, available at <http://www.legis.state.tx.us/BillLookup/text.aspx?LegSess=81R&Bill=HB1083>. To confirm an award under the Federal Arbitration Act, a party simply applies to the court and the court must confirm it unless the award is vacated, modified, or corrected. 9 U.S.C. § 9 (2000).

152. Tex. H.R. 1083 Bill Analysis, available at <http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=81R&Bill=HB1083>.

153. *Id.*

154. *Id.*

2. The Bill

Pursuant to the Federal Arbitration Act (FAA), individuals involved in commercial transactions may contract to resolve disputes through arbitration.¹⁵⁵ This alternative to litigation creates a less costly, binding procedure for the individuals. The Texas Civil Practice and Remedies Code authorizes a state court to refer pending cases to ADR procedures, such as mediation or arbitration.¹⁵⁶

In some of the larger counties in Texas, courts have adopted a procedure in which they automatically issue an order to mediate any case in which one of the parties files an answer to the lawsuit, regardless of whether the parties previously executed a contract requiring arbitration.¹⁵⁷ This procedure effectively preempts the contract to arbitrate. For example, in *In re Heritage Building Systems, Inc.*,¹⁵⁸ the FAA applied to the parties' claims. However, citing Texas's policy in favor of settlement, the trial court ordered the parties to mediate.¹⁵⁹ On appeal, the court reversed the order, concluding that mediation would cause unnecessary delays and additional legal costs to the parties, thereby frustrating the federal mandate that a case be ordered "to proceed to arbitration in accordance with the terms of the agreement."¹⁶⁰

House Bill 1083 is the codification of *In re Heritage Building Systems, Inc.*¹⁶¹ This amendment to section 154.021 of the Civil Practice and Remedies Code prohibits all state courts from ordering mediation in an action that is subject to the Federal Arbitration Act, thereby eliminating additional time and legal expenses.¹⁶²

3. Conclusion

It is too early to see how Texas courts will treat the new law. Because the language is very broad, covering "an *action* that is subject to the [FAA],"¹⁶³ a literal interpretation of the law may advocate a result in conflict with Texas's pro-mediation policies. Courts will likely interpret "action" to mean only a "claim," or "part of an action."¹⁶⁴ This will enable the courts to comply with the FAA and Texas's pro-mediation policies.¹⁶⁵ However, the overall purpose of House Bill 1083 is to eliminate the unnecessary costs and burdens Texas courts placed on individuals because of the courts' previous futile procedures.

155. 9 U.S.C. § 2 (2002).

156. TEX. CIV. PRAC. & REM. CODE § 152.003 (Vernon 2005).

157. Tex. H.R. 1083 Bill Analysis, available at <http://www.legis.state.tx.us/BillLookup/text.aspx?LegSess=81R&Bill=HB1083>.

158. 185 S.W.3d 539 (Tex. Ct. App. 2006).

159. *Id.* at 540.

160. *Id.* at 542 (quoting 9 U.S.C. § 4).

161. Audrey Mannes, *Weil, Gotshal, & Manges Guest-Post: Texas House Bill 1083, DISPUTING: CONVERSATIONS ABOUT DISPUTE RESOLUTION*, June 26, 2009, <http://www.karlbayer.com/blog/?p=2148>.

162. Tex. H.R. 1083 Bill Analysis, available at <http://www.legis.state.tx.us/BillLookup/text.aspx?LegSess=81R&Bill=HB1083>.

163. Tex. H.R. 1083 (codified at TEX. CIV. PRAC. & REM. § 154.021(c)) (emphasis added).

164. Mannes, *supra* note 161.

165. *Id.*

II. HIGHLIGHTS

A. Connecticut House Bill 6253

On January 28, 2009, Representative Fritz introduced House Bill 6253 in order to provide for more efficient resolution of medical malpractice claims.¹⁶⁶ If enacted, the Bill would amend the general statutes to establish mandatory pretrial screening and mediation in any action where negligence of a health care provider is alleged.¹⁶⁷ The screening and mediation would be conducted by a panel composed of members selected from a pool of health care providers, attorneys, and retired judges of the Connecticut Superior Court.¹⁶⁸ The Chief Justice of the state supreme court would select the retired judges for the pool.¹⁶⁹ The Bill aims to encourage settlement in meritorious claims and withdrawal in non-meritorious claims.¹⁷⁰ After its introduction, the Bill was referred to the House Judiciary Committee, where there has yet to be a vote on the Bill.¹⁷¹

B. Florida House Bill 653

The "Foreclosure Bill of Rights"¹⁷² was pre-filed on January 29, 2009, by Representative Darren Soto to aid in streamlining the foreclosure process.¹⁷³ The Bill would have implemented procedural requirements for plaintiffs, defendants, and courts in order to ensure effective and efficient due process for all litigants in mortgage foreclosure actions on homestead property.¹⁷⁴

After the lender has initiated a foreclosure on an individual's mortgage, the individual would have been able to notify the lender that he is invoking the protections of the Foreclosure Bill of Rights.¹⁷⁵ Once the individual's foreclosure rights have been invoked, the lender would not receive a final judgment against him until all conditions of the Foreclosure Bill of Rights have been satisfied.¹⁷⁶

Before a lender could receive final judgment, the Bill would have required the lender to provide a new appraisal of the individual's home, which would have taken short sales, foreclosures, and sales of similar homes in the area into consideration.¹⁷⁷ Upon completion of the appraisal, the lender was to deliver the results of the appraisal along with the original closing documents to the homeowner.¹⁷⁸ Upon receipt of these documents, the homeowner would have been required to

166. H.R. 6253, 2009 Gen. Assem., Reg. Sess. (Conn. 2009).

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. H.R. 6253 Bill History, available at <http://www.cga.ct.gov/> (enter "6253" in the field for "Number" at the top of the page; click "Go").

172. H.R. 653, 2009 Leg., 111th Reg. Sess. (Fla.).

173. *Id.* at Bill History, available at <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> (select "Regular Session 2009" in the "Session" field; enter "653" in the "Bill Number" field; click "Search"; follow "Homestead Property Foreclosure Actions" hyperlink).

174. Fla. H.R. 653.

175. *Id.* § 1(3).

176. *Id.* § 1(4).

177. *Id.* § 1(6)(a).

178. *Id.* § 1(6)(b).

deliver proof of his current financial status to the lender.¹⁷⁹ After documents were to be exchanged, the parties would have engaged in court-ordered mediation and put forth a good-faith effort at settling the claim.¹⁸⁰ The Foreclosure Bill of Rights aimed to streamline the foreclosure process and provide homeowners with ample opportunity to continue in ownership of their homesteads.¹⁸¹

Since being pre-filed in January, the Bill ultimately died in the Civil Justice and Courts Policy Committee on May 2, 2009.¹⁸²

C. Hawaii Senate Bill 196

Hawaii Senate Bill 196 was introduced on January 23, 2009, to provide for funding of a parenting plan mediation pilot program.¹⁸³ Senate Bill 196 would provide grant money—“\$85,000 or so much thereof as may be necessary”—to Hawaii’s Volunteer Legal Services to implement the pilot program.¹⁸⁴ The legislature found that children whose parents engage in a “high conflict divorce endure behavioral, social,” and emotional problems as a result.¹⁸⁵ It cited research finding that when parents cooperate and encourage their children to maintain a relationship with the other parent, “their children are more productive, better adjusted, and emotionally secure” following the divorce.¹⁸⁶ The pilot program would help divorcing parents develop a parenting plan without, and prior to, intervention by the family court system.¹⁸⁷ The goals of the pilot program are to lessen the amount of time it takes for divorcing couples to come to an agreement concerning child custody arrangements and to reduce the likelihood of intense, frequent conflict.¹⁸⁸ Thus, the parenting plan mediation pilot program would encourage divorcing parents to facilitate stability within a controlled environment for the benefit of their children.¹⁸⁹ On May 11, 2009, Senate Bill 196 was carried over to the 2010 regular session.¹⁹⁰

D. Minnesota House Bill 841

On February 16, 2009, Representative Al Junkhe introduced Minnesota House Bill 841 for the protection of Minnesota farmers.¹⁹¹ The Bill “proposes to extend the Farmer-Lender Mediation Act by changing the sunset date from June

179. *Id.* § 1(6)(c)(2).

180. *Id.* §§ 1(8)-(9).

181. *See* Fla. H.R. 653.

182. *Id.* at Bill History, available at <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> (select “Regular Session 2009” in the “Session” field; enter “653” in the “Bill Number” field; click “Search”; follow “Homestead Property Foreclosure Actions” hyperlink).

183. S. 196, 25th Leg., Reg. Sess. § 1 (Haw. 2009).

184. *Id.* § 2.

185. *Id.* § 1.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at Bill History, available at http://www.capitol.hawaii.gov/session2010/lists/measure_indiv.aspx?billtype=HB&billnumber=196.

191. H.R. 841, 86th Leg., Reg. Sess. (Minn. 2009).

30, 2009, to June 30, 2013.”¹⁹² In 1986, the legislature enacted the Farmer-Lender Mediation Act in response to the farm credit crisis that was then occurring.¹⁹³ The Act requires lenders to serve delinquent farmers with notice of the option of entering into mediation prior to initiating any collection proceedings against the farmer.¹⁹⁴ The farmer then has the opportunity to decide whether or not to enter into mediation.¹⁹⁵ If the farmer declines to enter into mediation, the lender is then able to initiate collection proceedings.¹⁹⁶ The University of Minnesota Extension, by law, has the authority of appointing the mediators and overseeing the mediation program.¹⁹⁷ The Bill has been referred to the House Agriculture, Rural Economics, and Veterans Affairs Finance Division.¹⁹⁸

E. Nevada Assembly Bill 149

Nevada Assembly Bill 149 was introduced to the Nevada Assembly on February 9, 2009.¹⁹⁹ The Bill provides for mediation in certain circumstances involving foreclosures.²⁰⁰ It is important to note that this Bill covers all housing that is encumbered by a trust agreement containing a power of sale.²⁰¹ The trustee may not exercise the power of sale unless, along with other requirements, the trustee mails the owner a request form in which the owner of the property may request or waive mediation.²⁰² If the owner of the encumbered property elects mediation, the trustee shall notify, by certified mail, the beneficiary of the deed of trust and all parties who may claim an interest in the property.²⁰³ Pursuant to such election by the owner, a mediation administrator shall then schedule the mediation between the parties.²⁰⁴

During the period in which the mediation is pending, the trustee may not exercise the power of sale.²⁰⁵ Further, if the owner of the encumbered property chooses to waive the right to mediation or fails to return the request, the trustee shall prepare an affidavit attesting to such facts.²⁰⁶ “Each mediation . . . [is] to be conducted by a senior justice, judge, hearing master or other designee.”²⁰⁷ In addition, both the beneficiary of the deed of trust (or his representative) and the grantor of the deed of trust (or his representative) are required to attend.²⁰⁸ Failure

192. *Id.* at Bill Summary, available at <http://www.house.leg.state.mn.us/hrd/bs/86/HF0841.html>.

193. *Id.*; MINN. STAT. §§ 583.20-32 (2000).

194. MINN. STAT. § 583.26(1)(a).

195. *See id.* §§ 583.26(2)(a)-(b).

196. *Id.* § 583.26(2)(b).

197. *Id.* §§ 583.20-32.

198. Minn. H.R. 841 Bill Status, available at https://www.revisor.mn.gov/revisor/pages/search_status/status_search.php?body=House (enter “841” in the field labeled “Search by Bill Number”; click “Go”; follow the “HF0841” hyperlink under “Bill Status”).

199. Assem. 149, 75th Leg., Reg. Sess. (Nev. 2009) (enacted).

200. *Id.*

201. *Id.* § (1).

202. *Id.* § 1(2)(a)(3).

203. *Id.* § 1(3).

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.* § 1(4).

208. *Id.*

of a party to attend the mediation will result in sanctions against that party.²⁰⁹ If the parties cannot agree, the mediator shall provide a recommendation to the mediation administrator; the administrator also will provide the trustee with a certificate stating that the mediation was completed in accordance with the law.²¹⁰ The Bill was introduced by Representatives Barbara Buckley, John Ocegüera, Marcus Conklin, Debbie Smith, Sheila Leslie; and Senator Steven A. Horsford.²¹¹ The Bill was passed on May 29, 2009, and the Governor approved it on May 29, 2009.²¹²

F. New York Senate Bill 659

Senate Bill 659 was termed the “Child Custody Reform Act” and seeks to provide standards for litigation and mediation of child custody disputes.²¹³ The Bill states that, if practicable, a parenting or support dispute should be assigned to a single judge in the court where the dispute is pending.²¹⁴ The judge in the proceeding shall seek to safely promote an expeditious agreement as to custody, support, or parenting plan.²¹⁵ In the initial appearance with the parties, the judge should determine whether mediation is appropriate.²¹⁶ If the judge finds that mediation is the proper course of action, the parties will be referred to a mediation information session.²¹⁷ The parties shall be required to attend the mediation information session; however, they reserve the right to decline any subsequent mediation services.²¹⁸ The mediation proceedings are to be confidential, and any communication between the parties and the mediator concerning custody, parenting, or support shall not be inadmissible in court, even if subpoenaed.²¹⁹ The mediator holds the right to terminate the mediation if at any time during the proceeding the mediator finds the dispute to be unsuitable for mediation.²²⁰ Senate Bill No. 659 was introduced by Senator William J. Larkin, Jr. on January 12, 2009.²²¹ On January 16, 2009, the Bill was then referred to the Committee on Children and Families where it remains.²²²

209. *Id.* §§ 1(4)-(5).

210. *Id.* § 1(7).

211. *Id.* at Bill History, available at <http://www.leg.state.nv.us/75th2009/Reports/history.cfm?ID=313>.

212. *Id.*

213. S. 659, 232d Assem., Reg. Sess. (N.Y. 2009).

214. *Id.* § 3 (to be codified at N.Y. DOM. REL. LAW § 242(B)(1)).

215. *Id.*

216. *Id.* (to be codified at N.Y. DOM. REL. LAW § 242(B)(2)).

217. *Id.* (to be codified at N.Y. DOM. REL. LAW § 242(B)(3)).

218. *Id.* (to be codified at N.Y. DOM. REL. LAW § 242(B)(5)). If the parties decline mediation, the case is then confidentially returned to the court. *Id.*

219. *Id.* (to be codified at N.Y. DOM. REL. LAW § 242(C)(3)). The mediator’s work shall fall under the work product doctrine. *Id.*

220. *Id.* (to be codified at N.Y. DOM. REL. LAW § 242(C)(4)(A)).

221. *Id.* at Bill Summary, available at <http://assembly.state.ny.us/leg/?bn=S00659>.

222. *Id.*

G. Oklahoma House Bill 1035

This Bill was introduced to the Oklahoma House of Representatives on February 2, 2009.²²³ Initially, it was authored individually by Representative Fred Jordan, but on February 19, 2009, Senator Dan Newberry was added as a principal co-author.²²⁴ House Bill 1035 amends section 20, chapter 364 of the Oklahoma Statutes,²²⁵ which relates to the record, notice, and timing of an award.²²⁶ The Bill removes the requirement that the arbitrator must support his or her decision by rendering certain findings.²²⁷ However, pursuant to Bill 1035, the arbitrator is no longer required to support his or her award with findings of fact or conclusions of law.²²⁸ This Bill moved quickly through the Oklahoma House of Representatives and was approved by the governor on May 22, 2009.²²⁹

H. Texas Senate Bill 222

This Bill was introduced to the Texas Senate on February 11, 2009 by Senator Royce West.²³⁰ If enacted, Senate Bill 222 would make significant amendments to the Texas Arbitration Act.²³¹ The amendments ban pre-dispute arbitration agreements in employment, consumer, and franchise contracts.²³² The ban of pre-dispute arbitration agreements ensures that parties with disparate bargaining power are not compelled to have their claims heard by an arbitrator.²³³ These amendments are intended to return fairness to the Texas arbitration system.²³⁴ Since February 11, 2009, the Bill has been in the Jurisprudence Committee under review.²³⁵

III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced during the first eleven months of 2009 concerning alternative dispute resolution.

223. H.R. 1035, 52nd Leg., Reg. Sess. (Okla. 2009) (enacted).

224. *Id.* at House Committee Report, available at <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html> (follow “Basic Search Form” hyperlink; enter “HB1035” in field for “Measure Number(s)”; make sure “2009 Regular Session” is selected in field labeled “Session”; click “Retrieve”).

225. Okla. H.R. 1035.

226. OKLA. STAT. tit. 12 § 1870 (Supp. 2009).

227. Okla. H.R. 1035 Bill Summary, available at <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html> (follow “Basic Search Form” hyperlink; enter “HB1035” in field for “Measure Number(s)”; make sure “2009 Regular Session” is selected in field labeled “Session”; click “Retrieve”; follow “Bill Summary” hyperlink).

228. Okla. H.R. 1035.

229. *Id.* at Bill History, available at <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html> (follow “Basic Search Form” hyperlink; enter “HB1035” in field for “Measure Number(s)”; make sure “2009 Regular Session” is selected in field labeled “Session”; click “Retrieve”).

230. S. 222, 81st Leg., Reg. Sess. Bill History (Tex. 2009).

231. *Id.* §§ 1(a), (h).

232. *Id.* § 2 (to be codified at TEX. CIV. PRAC. & REM. § 171.001(c)).

233. *Id.* § 1(b).

234. *Id.* § 1(h).

235. *Id.* at Bill History, available at <http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=81R&Bill=SB222>.

Alabama

Bills Enacted: None.

Other Legislation: S. 346 (allows joint transportation committee to call for and conduct a mandatory arbitration hearing involving a civil dispute or conflict between the department and any private business person or entity); S. 371 (would create a commission to help children of military service personnel better transition into education settings; disputes arising between branches of the Alabama government would be resolved through mediation and binding dispute resolution).

Alaska

Bills Enacted: None.

Other Legislation: H.R. 5 (opposes any federal legislation that seeks to eliminate private election phase of union recognition campaigns or seeks to impose compulsory and binding arbitration of employers); S. 38 (would call for timely dispute resolution of claims—including mediation—between managed care providers and claimants).

Arizona

Bills Enacted: None.

Other Legislation: H.R. 2396 (would create a commission that specifies disputes are resolved by ADR methods, including mediation, arbitration, and facilitated negotiation); S. 1447 (would create a commission to ensure prompt and safe placement of children in state custody; would require dispute resolution including mediation and arbitration of disputes); H.R. 2225 (would invalidate payday loan agreements to arbitrate if the contract itself is unconscionable); H.R. 2085 (would allow employees to organize and would authorize the use of federal mediation and conciliation services to resolve disputes).

Arkansas

Bills Enacted: None.

Other Legislation: H.R. 198 (would create a fund to establish the Appellate Mediation Pilot Program).

California

Bills Enacted: Assem. 773 (would increase funding to the state ombudsman responsible for investigating elder abuse); S. 95 (would enact the California Car Buyers' Protection Act of 2009, which, among other things, would make it unlawful for a dealer who acquires a used vehicle with a balance due to a secured party to fail to pay off the entire balance prior to advertising the vehicle for sale or transferring or selling the vehicle; would increase the amount of a dealer's bond from \$50,000 to \$250,000 for a franchisee of new motor vehicles and to \$100,000 for independent dealers).

Other Legislation: Assem. 335 (would void and make unenforceable as violating public policy any provision in an employment contract that requires an employee, as a condition of obtaining or continuing employment, to use a forum other than California, or to agree to a choice of law other than California law, to resolve any dispute with an employer regarding employment-related issues that arise in California); Assem. 696 (allows applicants for environmental projects to resolve disputes with the lead agency regarding environmental impact reports with arbitration); Assem. 541 (allows a public agency and a contractor to mutually agree to resolve claims through arbitration); S. 12 (would adopt rules to encourage arbitration and joint fact-finding in order to lessen the dependence on the courts and litigation); S. 1 (would create a certification program through the Department of Consumer Affairs); Assem. 649 (provides specified provisions allowing for arbitration between the Regents of the University of California and its contractors); Assem. 392 (requires a specified amount of funds be used to support local ombudsman projects); Assem. 216 (calls for mediation processes and binding arbitration between local instrumentalities and their contractors if claims remain unresolved for long periods of time).

Colorado

Bills Enacted: H.R. 1198 (allows parties to engage in dispute resolution when settling claims); S. 141 (would allow for mediation to settle disputes between parties in a newly created watershed, flood control, and greenway district); S. 223 (would create a dispute resolution panel consisting of members from the local community and ADR professionals; allows the licensee and the county or district public health agency to provide information related to the grievance; a dispute resolution panel would make findings concerning the grievance and recommend a resolution to the county or district public health officials); S. 208 (would create a fund to support dispute resolution efforts by the state); S. 110 (when a civil rights violation has been alleged to the state Civil Rights Commission, the Director may order compulsory mediation between both parties).

Other Legislation: S. 180 (allows parties at an impasse in public safety worker arbitrations to appoint an arbitrator to assist them in engaging in joint fact-finding); H.B. 1273 (would create a health care system that would be the health care administrator for the state; would require arbitration for grievances alleging delay, denial, or modification of health care services).

Connecticut

Bills Enacted: H.R. 6263 (establishes mandatory pretrial screening and mediation in medical malpractice cases in order to encourage settlement of meritorious claims and withdrawal of non-meritorious claims).

Other Legislation: S. 619 (clarifies that notice of the availability of foreclosure mediation must be provided on the face of a writ, summons and complaint; allows judgments of strict foreclosure to be re-opened by agreement of all appearing parties for a period of up to four months after judgment has entered). H.R. 6587 (requires the Departments of Environmental Protection; Transportation; and Economic and Community Development to designate a municipal liaison to help

coordinate interaction with local government); S. 1044 (requires the Chief Court Administrator to prepare a list of organizations that provide training in land use mediation to authorize such organizations to certify mediators in appeals of local land use decisions); S. 804 (allows municipal employee organizations the right to reject arbitration awards and to require that such organizations split the costs of the binding arbitration that follows with the municipality); H.R. 9 (proposes approval of an arbitration award between the state and the American Federation of State, County, and Municipal Employees); H.R. 5367 (establishes an Office of the Ombudsmen for condominium disputes); S. 336 (establishes a mediation process for the repurchase of Route 6 property by abutting landowners); S. 477 (concerns the arbitration of education contracts; permits contract arbitrator to consider changed economic conditions or forecasts when ruling on contracts); H.R. 5250 (concerns intervention by local legislative bodies in binding arbitration proceedings; allows legislative bodies of municipalities to intervene in binding arbitration proceedings); H.R. 9 (proposes approval of an arbitration award between the state and the AFSCME).

Delaware

Bills Enacted: H.R. 49 (preserves Delaware's pre-eminence in offering cost-effective options for resolving disputes, particularly those involving commercial, corporate, and technology matters; authorizes parties voluntarily to agree to have a member of the Court of Chancery arbitrate a dispute if the parties do so by entering into a contract that meets the pre-existing requirements for using the mediation-only provisions that the General Assembly recently enacted).

Other Legislation: H.R. Con. Res. 1 (urges Congress to pass the Employee Free Choice Act, which will protect and preserve working Americans' freedom to choose whether to form a union).

District of Columbia

Bills Enacted: None.

Other Legislation: None.

Florida

Bills Enacted: None.

Other Legislation: S. 1416 (relates to collaborative process and dispute resolution; called the Collaborative Process Act; tolls statutes of limitations and other periods of time established by law or agreement to enforce a legal or contractual right; provides for confidentiality of communications made during the collaborative process); H.R. 1135 (creates Florida Consumer and Small Business Arbitration Act; provides application; provides provisions relating to arbitration proceedings—including arbitrator and umpire selection; the rights and duties of parties, arbitrators and umpires; and rules pertaining to disclosure, awards, fees, damages, discovery, notice, and appeals); S. 2250 (reduces the filing fee for civil actions to remove a tenant from possession of real property; creates a filing fee for civil actions filed to remove a tenant from possession of real property and to seek dam-

ages from the tenant; requires that certain filing fees be deposited in the state courts' Mediation and Arbitration Trust fund); S. 2192 (creates Florida Consumer and Small Business Arbitration Act; provides that the act does not apply to certain insurance policies and certain arbitrations; provides that mandatory binding arbitration is void and unenforceable except as otherwise provided by federal law); S. 1298 (authorizes court to refer actions regarding mobile home park lot tenancies to binding arbitration; amends a provision related to grounds and proceedings for eviction; revises payment amounts mobile home owners are entitled to from the Florida Mobile Home Relocation Corporation under certain circumstances; requires mobile home park owners receiving a bona fide offer for purchase to notify the officers of the homeowners' association); H.R. 653 (creates Foreclosure Bill of Rights relating to homestead property foreclosure actions; provides procedural requirements and limitations for plaintiffs, defendants, and courts in homestead property mortgage foreclosure actions; specifies document production requirements; requires mediation; specifies settlement negotiation requirements; provides criteria for commercial reasonableness of renegotiated loans); S. 1032 (authorizes the court to refer actions relating to mobile home park tenancies to binding arbitration under certain conditions; amends a provision relating to grounds and proceedings for eviction; requires a mobile home park owner to apply to the local government for change of use or rezoning under specified conditions; requires such owner to provide a specified relocation plan; revises notice requirements relating to the sale of mobile home parks); H.R. 395 (encourages parties to peacefully resolve disputes through voluntary settlement procedures; provides for limited confidentiality in such procedures); S. 7014 (requires the Department of Transportation conduct a study of transportation alternatives for the Interstate 95 corridor; provides that certain port-related facilities may not be designated as developments of regional impact under certain circumstances; provides for the State Arbitration Board to arbitrate certain claims relating to maintenance contracts); S. 506 (urges the Congress of the United States to enact the Employee Free Choice Act, which contains provisions allowing employees to form unions by signing cards authorizing union representation; establishes stronger penalties for violation of employee rights when workers seek to form a union during first-contract negotiations; provides for mediation and arbitration of first-contract disputes); H.R. 95 (specifies that the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court shall be deemed a legislative body for their respective employees for resolution of collective bargaining impasses; relates to the appointment of mediators).

Georgia

Bills Enacted: None.

Other Legislation: S. Res. 49 (urges the Congress of the United States to oppose any efforts to adopt the Employee Free Choice Act); H.R. Res. 71 (urges the Congress of the United States to oppose any efforts to adopt the Employee Free Choice Act).

Hawaii

Bills Enacted: S. 574 (extends the condominium dispute resolution pilot project until June 30, 2011).

Other Legislation: H.R. 1787 (allows Office of Consumer Protection to order mediation between a residential landlord and tenant); S. 1328 (allows occupants of residential property to engage in mediation with a mortgagee to prevent foreclosure); H.R. 1792 (establishes the evaluative mediation program in relation to condominiums); S. 195 (allows Real Estate Commission to spend money from the condominium education trust fund on mediations using an evaluative method); S. 196 (appropriates funds to judiciary for implementation of parenting plan mediation pilot program); S. 120 & H.R. 782 (adopts the Uniform Mediation Act); S. 341 (revises medical tort reform laws to allow for arbitration of medical services contracts); H.R. 1602 (requires real estate appraiser to comply with Uniform Standards of Professional Appraisal Practice when acting as arbitrator).

Idaho

Bills Enacted: H.R. 36 (revises provisions relating to seed arbitration and the Seed Arbitration Council).

Other Legislation: None.

Illinois

Bills Enacted: S. 1433 (amends the Reviewing Court Alternative Dispute Resolution Act; eliminates the Reviewing Court Alternative Dispute Resolution Fund); H.R. 3691 (eliminates Reviewing Court Alternative Dispute Resolution Fund; transfers remaining funds into Mandatory Arbitration Fund); S. 1715 (amends Illinois Public Labor Relations Act and Illinois Educational Labor Relations Act by establishing time frame within which conciliation and arbitration must be attempted); S. 1282 (amends Liquor Control Act of 1934 by providing that arbitration provisions apply if brewer agrees to pay reasonable compensation as defined under the Act).

Other Legislation: S. 1415 & H.R. 3993 (provides an arbitration procedure concerning security labor agreement's wage rates and other employment conditions); H.R. 2673 (requires school districts to provide training in violence prevention and conflict resolution education); H.R. 58 (requires performance audits of arbitrators); H.R. 1959 (amends the Reviewing Court Alternative Dispute Resolution Act); S. 1415 (amends the Illinois Public Labor Relations Act to require arbitration panel to consider statutory factors); S. 2108 (authorizes either party to make settlement offer in actions for money damages in arbitration); S. 1001 (amends the Health Care Arbitration Act); S. 1618 & H.R. 2249 (amends Illinois Public Labor Relations Act by expanding scope of arbitration to include residency requirements in municipalities with a population of 1,000,000 or more); H.R. 1729 (amends Illinois Insurance Code by making technical change in section concerning arbitration of medical malpractice disputes); S. 999 (amends Reviewing Court Alternative Dispute Resolution Act); S. 184 (amends Code of Civil Proce-

dure by providing that prejudgment interest is awarded when written notice is given or arbitration action is filed).

Indiana

Bills Enacted: H.R. 1381 (allows the determination made in the mediation by Department of Natural Resources to be enforced in civil proceeding).

Other Legislation: S. 573 (provides that judicial mandate submitted to arbitration must be heard by panel of three arbitrators); S. 574 (establishes a third-party dispute resolution process with a registered nurse review panel); H.R. 1240 (requires mediator to file settlement agreement and dissolution decree at completion of marriage dissolution mediation); S. 123 (requires parties to attempt to resolve dispute through mediation before bringing an action in court regarding homeowners association election disputes).

Iowa

Bills Enacted: None.

Other Legislation: H.R. 4 (provides that a child who refuses mediation or violates a mediation agreement commits a delinquent act); H.R. 388 (assesses a mediation fee in small claims cases).

Kansas

Bills Enacted: None.

Other Legislation: H.R. 2253 (relates to duties, procedures, attorney fees, dispute resolution and duties of the attorney general concerning homeowners' associations and associations of apartment owners).

Kentucky

Bills Enacted: None.

Other Legislation: S. 134 (requires mediators to consider power line placement in their reports if an agreement between the well operator and surface owner cannot be reached); H.R. 300 (includes provisions allowing for mediation of discrimination complaints concerning the Human Rights Commission).

Louisiana

Bills Enacted: None.

Other Legislation: S. Con. Res. 16 (requests the Louisiana State Law Institute to study certain aspects of court-ordered mediation).

Maine

Bills Enacted: S. 403 (concerns dispute resolution in home construction contracts); S. 311 (authorizes a retired justice or judge to be appointed as an active

retired judge or justice to conduct arbitration and chair medical malpractice screening panels).

Other Legislation: S. 278 (requires the use of alternative dispute resolution in foreclosures); H.R. 968 (encourages parties involved in mediation to communicate openly; protects confidentiality of mediation participants); S. 113 (allows property owners to submit to binding arbitration and specifies arbitration procedure); H.R. 615 (requires that agreements to submit to arbitration be optional); H.R. 875 (prohibits pre-dispute mandatory binding arbitration clauses in consumer contracts).

Maryland

Bills Enacted: None.

Other Legislation: H.D. 1357 (provides for binding arbitration under specified circumstances for Maryland Transportation Authority police officers); H.D. 1243 (amends Fairness in Negotiations Act by requiring specified collective bargaining agreements to provide for binding arbitration of grievances); S. 673 (amends Fairness in Negotiations Act by requiring the Public School Labor Relations Board to hear specified controversies and disputes).

Massachusetts

Bills Enacted: None.

Other Legislation: H.R. 856 (relates to arbitration with insurance companies for property damage to motor vehicles); S. 1120 (relates to interest arbitration for state-employed health-care professionals); H.R. 2435 (provides an interest arbitration alternative for firefighters); H.R. 4003 (relates to court-supervised foreclosure mediation programs); H.R. 1649 (relates to the right to participate in a court-supervised foreclosure mediation program); H.R. 3729 (relates to interest arbitration for state police collective bargaining disputes); H.R. 2656 (requires that provisions be made for binding arbitration for firefighters and police officers); H.R. 2419 (relates to providing for binding arbitration for firefighters and police officers); S. 283 (promotes alternative dispute resolution for students); S. 697 (relates to mediation); H.R. 1411 (relates to certain changes in mediation procedures relative to small claims in the district courts); S. 1805 (establishes a foreclosure mediation program); H.R. 1823 (relates to binding arbitration); S. 1176 (promotes legislation relating to binding arbitration); H.R. 1829 (relates to binding arbitration for employees of the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority); H.R. 2447 (relates to binding arbitration for employee organizations engaged in successor contract negotiations with employers).

Michigan

Bills Enacted: S. 190 (provides for dispute resolution process for video services); H.R. 4454 (creates negotiation program for mortgages of certain residential properties that are in default).

Other Legislation: S. 99 (revises procedures contained in existing law relating to arbitration proceedings concerning divorce); H.R. 4046 (establishes mediation program and moratorium for residential mortgage foreclosures); S. 101 (re-

revises domestic relations mediation provisions in Child Custody Act); H.R. 4247 (provides for dispute resolution process concerning video services).

Minnesota

Bills Enacted: None.

Other Legislation: S. 891 (adopts the Uniform Arbitration Act); S. 1582 (requires binding arbitration agreement before teacher strike); S. 289 & H.R. 841 (extends expiration date of Farmer-Lender Mediation Act); H.R. 1700 (modifies alternative dispute resolution process and due process hearing guidelines for children with disabilities); H.R. 1691 (provides for conciliation court alternative dispute resolution program); H.R. 542 (requires mediation in relation to family law and grandparent visitation rights); S. 340 & H.R. 354 (creates a homestead-lender mediation account); H.R. 34 (regulates mandatory arbitration clauses in a contract or agreement between an insurance carrier and beneficiary).

Mississippi

Bills Enacted: None.

Other Legislation: H.R. 1122 (relates to arbitration clause and considers them nonbinding in certain contracts).

Missouri

Bills Enacted: None.

Other Legislation: S. 41 (authorizes mediation services concerning the protection of children against sex offenders and abusers); S. 444 (creates general standards for the use of mediation to resolve disputes).

Montana

Bills Enacted: H.R. 119 (revises laws related to employment; authorizes negotiation of agreements with tribal governments to recognize and give effect to certain tribal workers' compensation plans; provides for voluntary non-binding mediation in certain contexts); H.R. 322 (requires appointed neutral arbitrators to disclose conflicts of interests).

Other Legislation: H.R. 225 (provides for alternative dispute resolution methods to solve labor disputes).

Nebraska

Bills Enacted: Leg. 101 (eliminates the Farm Mediation Act).

Other Legislation: None.

Nevada

Bills Enacted: Assem. 149 (provides for mediation in certain situations concerning foreclosures on property); S. 65 (creates the position of Long Term Care

Ombudsman); Assem. 254 (makes the position of Ombudsman of Consumer Affairs for Minorities a permanent position).

Other Legislation: S. 369 (provides for taxation of prostitution; establishes ombudsman for sex workers); Assem. 381 (makes certain arbitration provisions void and unenforceable; requires certain disclosures by arbitral organizations); Assem. 331 (creates position of Business Ombudsman appointed by governor; sets forth ombudsman's duties).

New Hampshire

Bills Enacted: H.R. 281 (increases the maximum amount of debt or damage for small claims actions exceeding \$5,000 that require mediation; establishes fee for the cost of such mediation); S. 106 (establishes a program for mediations of civil writs in the district court; funds the program with a surcharge on the filing fee for civil writs); S. 12 (renames "marital mediators" to "family mediators"; increases membership on the marital mediation board); S. 70 (authorizes the Office of Mediation and Arbitration within the judicial branch to provide pre-suit alternative dispute resolution services).

Other Legislation: S. 74 (requires mediation for small claims actions).

New Jersey

Bills Enacted: None.

Other Legislation: None.

New Mexico

Bills Enacted: H.R. 15 (authorizes state employees who have entered into collective bargaining agreements to enter arbitration to resolve a contested dismissal, demotion, or suspension).

Other Legislation: H.R. 275 (creates the Dona County Court and provides for a mediation fund); H.R. 249 (provides mediation services aimed at preventing mobile home owners from rent increases); S. 164 (authorizes a state employee who has entered into a collective bargaining agreement to enter arbitration to resolve a contested dismissal, demotion, or suspension).

New York

Bills Enacted: Assem. 3425 (amends the civil service law in relation to extending the effectiveness of provisions that establish dispute resolution during collective negotiations).

Other Legislation: S. 3521 (amends the civil service law in relation to an arbitrator's priorities in issuing a decision involving a public employer); S. 3284 (provides for binding arbitration in negotiations involving all members of the collective negotiating units designated as security services or security supervisors); Assem. 6275 (amends insurance law in relation to the collateral estoppel effect of issues decided by certain arbitrators); S. 5923 (creates an office of ombudsman and office of mediators to hear human rights disputes); Assem. 3681

(amends the civil practice laws and rules in relation to grounds for modifying an arbitration award); Assem. 3147 (establishes the land use mediation program; establishes the court alternative dispute resolution service); S. 965 (amends the private housing finance law in relation to providing for arbitration with respect to rental increases granted to limited-profit housing companies); Assem. 2909 (fosters the use of alternative dispute resolution techniques in resolving public disputes; establishes a state committee on public dispute resolution relating thereto); Assem. 2433 (requires an arbitration panel consider qualifications and training requirements for Bridge and Tunnel Officers); S. 659 (provides uniform statewide standards for the litigation and mediation of child custody disputes; provides an initial planning conference between parties; provides for mediation); Assem. 521 (establishes a crime victim's ombudsman; provides for such ombudsman's functions, powers and duties); Assem. 1592 (establishes the office of ombudsman for public schools).

North Carolina

Bills Enacted: None.

Other Legislation: H.R. 791 (appropriates funds to expand the North Carolina Mediation Program at Western Carolina University in order to provide mediation, arbitration, and negotiation services to traditionally underserved members of the agricultural community in foreclosures, bankruptcies, and other agricultural disputes); S. 707 (authorizes the Administrative Office of the Courts to charge fees to applicants for mediator and mediator training program certifications and certification renewal fees).

North Dakota

Bills Enacted: H.R. 1098 (amends and reenacts certain sections of the North Dakota Century Code that provide for effective dates for petroleum release mediation); S. 2172 (amends and reenacts sections of the North Dakota Century Code relating to access to public records in arbitration proceedings and to exempting law enforcement work schedules from open records requirement).

Other Legislation: None.

Ohio

Bills Enacted: None.

Other Legislation: None.

Oklahoma

Bills Enacted: H.R. 1035 (removes the requirement that arbitrators issue a report to support their final decision in issuing an award); H.R. 1729 (provides that the Oklahoma State Department of Health offer long-term care facilities the option to participate in an informal dispute resolution panel); S. 503 (provides for consumer complaint and mediation process in the Household Goods Act).

Other Legislation: S. 33 (directs the Oklahoma Health Care Authority to mediate in certain formal dispute resolution processes); S. 1121 (modifies mediators' training requirements).

Oregon

Bills Enacted: S. 628 (requires mandatory mediation between trustee and grantor before sale to foreclose residential trust deed).

Other Legislation: H.R. 2903 (reduces to seventy-two hours the minimum time before the first day of employment that employer is required to notify employee in written employment offer that arbitration agreement or noncompetition agreement is required as condition of employment); H.R. 3217 (prohibits motor vehicle liability insurance policies containing provision requiring arbitration of disputes); H.R. 2808 (modifies arbitrator authority regarding reinstatement of public employees); S. 518 (provides that parties may not waive dispute resolution in certain cases arising out of provision of health care); S. 281 (requires that parties and attorneys in certain tort actions must participate in some form of dispute resolution within one year after action is filed).

Pennsylvania

Bills Enacted: None.

Other Legislation: S. 907 (provides for validity of agreement to arbitrate for common law arbitration and for compulsory arbitration); H.R. 1813 (provides for compulsory mediation, fact-finding, and arbitration for certain public employees in collective bargaining impasses); S. 1052 (provides for dispute resolution for educating exceptional children); H.R. 126 (prohibits magisterial district judges serving as arbitrators).

Rhode Island

Bills Enacted: None.

Other Legislation: S. 569 (establishes standards and procedures whereby a school committee may request nonbinding, fact-finding mediation); S. 765 (creates a comprehensive Uniform Mediation Law); S. 625 (requires the state to pay the cost of compulsory mediation involving municipal employees); S. 693 (exempts the state from any arbitration decision, development to the imposition of mandates requiring minimum staffing levels, the permanent of personnel while on the job, the types of equipment utilized by the state, and the number and location of any vehicles or facilities utilized by the state); S. 694 (allows for arbitration decisions and negotiated contracts to be the obligation of cities or towns to negotiate in good faith); S. 186 (authorizes hospitals and health insurers to declare an impasse and submit to binding arbitration the terms of agreements between hospitals and commercial health insurers); H.R. 5583 (establishes arbitration procedures for quasi-state employees); H.R. 5584 (establishes labor arbitration procedures for organized employees of the Rhode Island Resource Recovery Corporation); H.R. 5589 (makes several procedural and substantive changes in municipal employees' grievance and interest in arbitration laws); H.R. 5492 (requires

foreclosing lenders to offer mediation to their mortgagors); S. 335 (acknowledges arbitration as the preferred alternative labor dispute resolution mechanism and limits instances when an arbitration award can be vacated); H.R. 5142 (expands the scope of binding arbitration process to include monetary issues for teachers and non-binding teacher educational employees); S. 443 (provides for last-best offer arbitration for firefighters and municipal police); H.R. 5196 (provides guidelines for arbitration of motor vehicle accident claimants).

South Carolina

Bills Enacted: None

Other Legislation: S. 200 (provides that any case with an amount in controversy equaling or exceeding a certain amount must be ordered for mandatory mediation in accordance with procedures established by the state supreme court).

South Dakota

Bills Enacted: None.

Other Legislation: None.

Tennessee

Bills Enacted: None.

Other Legislation: S. 736 (decreases from eight months to six months the time in which an arbitration award shall be filed if the time is not fixed in the submission and the time is prolonged by mutual consent).

Texas

Bills Enacted: S. 1650 (grants Texas appellate courts jurisdiction over certain interlocutory appeals arising under the Federal Arbitration Act); H.R. 2256 (relates to mediation of out-of-network health benefit claim disputes concerning enrollees, facility-based physicians, and certain health benefit plans); H.R. 1083 (relates to mediation orders in certain arbitration proceedings).

Other Legislation: S. 222 (amends the Texas Arbitration Act to ban pre-dispute arbitration in employment, consumer, and franchise contracts; prohibits arbitration of civil rights claims); H.R. 2139 (establishes a victim-offender pretrial mediation program for first-time offenders); H.R. 2095 (prohibits charging homeowners with fees in connection with state sponsored inspection or dispute resolution processes and arbitration required under the act that regulates claims against residential home builders); H.R. 2896 (provides that a contract form requiring the parties to agree to binding arbitration cannot be adopted); H.R. 3426 (provides mediation rules for foreclosure disputes); H.R. 2696 (prohibits one contracting party from requiring the other party to agree to arbitration as a condition of the contract; provides an agreement to arbitrate must be displayed prominently in twelve-point bold type); S. 556 (provides for binding arbitration agreements within the context of health-care contracts with physicians and health care providers); H.R. 1635 (abolishes the Texas Residential Construction Commission; provides

for the phasing out of arbitration claims); H.R. 2539 (relates to a disaster recovery insurance claims mediation program); S. 1117 (relates to the appeal of certain *ad valorem* tax determinations through binding arbitration); H.R. 4377 (relates to the confidentiality of certain communications involving an ombudsman program established by an employer as an alternative dispute resolution service).

Utah

Bills Enacted: S. 121 (modifies the obligation of parties in workers' compensation claims to participate in informal dispute resolution mechanisms).

Other Legislation: H.R. 424 (amends the Utah Uniform Arbitration Act).

Vermont

Bills Enacted: None.

Other Legislation: H.R. 29 (prohibits teachers and administrators from striking and school boards from imposing contracts; requires mandatory binding arbitration; permits voters the opportunity to approve or disapprove the budget in school districts in which the mandatory arbitration has resulted in a contract that exceeds the previous approved budget by a certain amount).

Virginia

Bills Enacted: H.D. 2618 (sets the terms for members of the Interagency Dispute Resolution Advisory Council).

Other Legislation: S. 1217 (removes the power of the Director of the Department of Employment Dispute Resolution to render final decisions on all matters related to procedural compliance with the state employee grievance procedure).

Washington

Bills Enacted: None.

Other Legislation: H.R. 2207 (exempts certain records relating to the conflict resolution process of the office of the education ombudsman from public disclosure—including the identities of students, complainants, and other individuals from whom information is acquired); H.R. 5908 (provides the administration of interest arbitration for employees of juvenile court services); H.R. 1822 (authorizes interest arbitration for airport general authority and peace officers); S. 5573 (makes health care providers' billing statements admissible in arbitration proceedings); H.R. 1140 (requires the attorney general, after receiving a complaint under a certain provision of Washington state law, to initiate the manufactured/mobile home dispute resolution program by obtaining information in an informal manner and facilitating communication between the parties with the goal of resolving the dispute).

West Virginia

Bills Enacted: None.

Other Legislation: None.

Wisconsin

Bills Enacted: S. 46 (relates to arbitration and fair-share agreements during collective bargaining negotiations under the Municipal Employment Relations Act).

Other Legislation: None.

Wyoming

Bills Enacted: H.R. 62 (allows mediation of charter school application disputes).

Other Legislation: None.