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## State Legislative Update

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# STATE LEGISLATIVE UPDATE\*

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## I. STATE LEGISLATIVE FOCUS

### *A. Mandating Arbitration of Medical Malpractice Suits and Capping Damages Available in such Claims*

Bill Number: Vermont House Bill 663  
Summary: This Bill would require that medical malpractice suits were submitted to arbitration and would also limit the amount of damages available to medical malpractice claimants.  
Status: Referred to the Judiciary Committee

#### *1. Introduction*

Vermont House Bill 663 would modify current law to follow a national trend of special medical malpractice statutes that require the arbitration of such claims, as well as following a similar trend to limit noneconomic and non-pecuniary damage recovery.<sup>1</sup> Arbitration for medical malpractice claims has been allowed under state law for more than thirty years.<sup>2</sup> The bill, sponsored by nine members of the General Assembly, sought to amend the “Voluntary Arbitration Chapter,” chapter 215 (§§ 7001-7009) and add a provision to section 1913 of Vermont Statute Title 12.<sup>3</sup>

There has been an ebb and flow of medical malpractice claims that has created what is referred to as “medical malpractice crisis” over the past fifty years. This “crisis” is defined by the increase of physician medical premiums, which in turn results in higher healthcare costs as well as a number of physicians who become unable to afford to maintain their practice.<sup>4</sup> Capping the amount of noneconomic damages is one possible solution to curb the swelling of medical malprac-

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\* 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 email the Journal of Dispute Resolution Editorial Board at [UMCLAWJOURNAL@missouri.edu](mailto:UMCLAWJOURNAL@missouri.edu)

1. Matthew Parrott, Note, *Is Compulsory Court-Annexed Medical Malpractice Arbitration Constitutional? How the Debate Reflects a Trend Towards Compulsion in Alternative Dispute Resolution*, 75 *FORDHAM L. REV.* 2685, 2709 (2007).

2. *VT. STAT. ANN.* tit. 12, § 215 (2003).

3. H.B. 663, 2009 Leg., 2009-2010 Adj. Sess. (Vt. 2009).

4. Kenneth E. Thorpe, *The Medical Malpractice 'Crisis': Recent Trends And the Impact of State Tort Reforms*, *HEALTH AFF.* 20, 26 (Jan. 21, 2004), <http://content.healthaffairs.org/cgi/reprint/hlthaff.w4.20v1.pdf>. (page numbers follow PDF).

tice litigation.<sup>5</sup> Requiring all such claims to be submitted to a variance of alternative dispute resolution is another solution. Reduced time and expense as well as the ability to choose the decision maker are all assets of that make arbitration a desirable means of managing medical malpractice claims.<sup>6</sup> In addition, the privacy offered by arbitration makes it an attractive avenue for physicians who wish to maintain a favorable reputation.<sup>7</sup>

By contrast, other characteristics of arbitration might create a ‘one-size-fits-all’ scenario that is inappropriate for many egregious claims should all claims be mandatory.<sup>8</sup> For example, counsel often is less scrupulous in cases submitted to arbitration and discovery is often unavailable or unutilized.<sup>9</sup> The procedures for choosing arbitrators can often be drawn out, which is contrary to the idea that arbitration expedites a claim.

## 2. The Bill

Indicative of the legislature’s objective to pursue alternative dispute resolution with respect to medical malpractice claims, the bill would strike permissive language at the chapter’s forefront, which included replacing the current title, “Voluntary Arbitration,” with “Medical Malpractice Arbitration.”<sup>10</sup> The amendment eliminated the requirement that the parties must agree to have their claim arbitrated and instead states that before pursuing litigation, an individual with a malpractice claim *shall* submit such a claim to arbitration.<sup>11</sup> Whereas under current law, written consent of all parties is necessary before a party or the claim could be withdrawn from the arbitration.<sup>12</sup> The amendment also provides that the arbitration decision is appealable unless the parties agree to be bound by the arbitration decision.<sup>13</sup> While the current statute gives authority to appeal arbitral decisions, the bill would clarify when an appeal can be made, as well as the procedural rules governing the appeal.<sup>14</sup> An appeal would be held in “the county in which the claimant resides” or in Washington superior court when the claimant is not a state resident.<sup>15</sup> Therein, the claim will be heard *de novo*, either by judge or by jury at any party’s election.<sup>16</sup> The arbitration decision and its findings are admissible as evidence on appeal, but it is left to the court to determine how to introduce the findings to avert any unfair prejudice.<sup>17</sup> The bill mandates an appellee’s attorney’s fees to be paid by an appellant who fails to achieve a different determination or is otherwise less successful than they had been with respect to the arbitrator’s

5. *Id.* at 26-27.

6. Ann H. Nevers, *Medical Malpractice Arbitration in the New Millenium: Much Ado About Nothing?*, 1 PEPP. DISP. RESOL. L. J. 45, 49-51 (2000).

7. *Id.* at 47.

8. Joseph C. Krella, Comment, *Legislative Malpractice: An Analysis of Ohio’s Proposed Mandatory Medical Malpractice Arbitration Program*, 33 U. Dayton L. Rev. 119, 136-38 (2007).

9. *Id.* at 136-37.

10. H.B. 663, 2009 Leg., 2009-2010 Adj. Sess. (Vt. 2009).

11. *Id.* § 7002(a) (emphasis added).

12. *Id.*

13. *Id.*

14. *Id.* § 7005.

15. *Id.* § 7005(b).

16. H.B. 663 § 5005(b), 2009 Leg., 2009-2010 Adj. Sess. (Vt. 2009).

17. *Id.*

decision.<sup>18</sup> The bill also amends the arbitration's procedure to provide for the creation of guidelines that would be admissible with respect to the issue of whether a particular standard of care is met.<sup>19</sup>

In addition, to further the expedience that is expected of alternative dispute resolution practices, the bill would establish various filing deadlines.<sup>20</sup> An arbitration hearing would have to be set within 121 days of the date that the claim is filed.<sup>21</sup> The timeline in which the arbitration decision would need to be filed with the superior court is restricted to "no . . . later than 180 days after" the claim was filed.<sup>22</sup> Failure of the arbitration panel to meet this deadline would permit the claimant to file directly in the superior court.<sup>23</sup> When a timely final arbitration decision is filed, any party has 30 days to appeal.<sup>24</sup>

In an earlier section of Vermont Statute Title 12, the bill adds a provision to cap the amount of noneconomic damages that can be awarded in medical malpractice claims.<sup>25</sup> Under the bill, "noneconomic damages" are defined as "damages arising from pain, suffering, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, and other nonpecuniary damages."<sup>26</sup> A claimant's noneconomic damage recovery would be capped at \$250,000; unless his or her economic damages are less than that amount, in which case such recovery would be limited the amount of the economic damage award.<sup>27</sup> The same limitations would be applied to the recovery from a health insurer or other medical service provider.<sup>28</sup> In addition, if a party rejects an earlier offer that is more favorable than the final judgment that is eventually issued, that party would be responsible for the opposing party's reasonable attorney's fees.<sup>29</sup>

### 3. Conclusion

Medical malpractice claims can present high stakes for all parties involved. The nature of such claims creates pressure for physicians to defend their good-standing in their profession and can involve intense emotion and physical suffering for the patients involved. Patients may be experiencing the highest level of trauma of their lives, which likely includes grave physical and emotional suffering. Due to the sweeping consequences of high physician premiums and the likelihood that medical malpractice claims will not subside, legislative efforts will continue to address these issues. It is unclear whether a mandatory arbitration program is the best strategy to effectively administer medical malpractice claims in terms of cost or time. Ultimately, the Vermont legislature determined that

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18. *Id.* § 7005(c).

19. *Id.* § 7003(b).

20. *Id.* §§ 7002(c), 7004, 7005(b).

21. *Id.* § 7002(c).

22. Vt. H.B. 663 § 7004.

23. *Id.*

24. *Id.* § 7005(b).

25. Vt. H.B. 663 § 1913.

26. *Id.* § 1913(d).

27. *Id.* § 1913(a).

28. *Id.* § 1913(c).

29. H.B. 663 § 1913(b), 2009 Leg., 2009-2010 Adj. Sess. (Vt. 2009).

House Bill 663 was not the solution; the bill was referred to the Judiciary Committee where it died at the session's end in late April.<sup>30</sup>

*B. Stopping Arbitration Before It Begins: Wisconsin State Legislators' Attempt to Nullify Pre-Admittance Arbitration Agreements Between Nursing Homes and Their Residents*

**Bill Numbers:** Wisconsin Assembly Bill 951<sup>31</sup> and Wisconsin Senate Bill 673<sup>32</sup>  
**Summary:** Under this legislation, contractual agreements to compel arbitration in disputes between nursing homes and residents would be void as against public policy.  
**Status:** Both bills were declared failed to pass on April 28, 2010.

*1. Introduction*

Since the passage of the Federal Arbitration Act (FAA) and in several notable court decisions within the past few years, courts have been called to look at arbitration agreements between residents and nursing homes and decide when such agreements will be enforced.<sup>33</sup> The original goals of arbitration<sup>34</sup> would belie the rising concern that arbitration agreements are strong-arm tactics to block weaker parties' access to the courts, but that has not kept legislators who disagree from trying to take action.<sup>35</sup> In addition, examples exist that dispute the assertions of arbitration supporters that it is used primarily to expedite and decrease the costs of resolving claims.<sup>36</sup>

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30. The Vermont Legislative Bill Tracking System, *Current Status of a Specific Bill or Resolution 2009-2010 Legislative Session*, <http://www.leg.state.vt.us/database/database2.cfm?Session=2010> (follow "Search for Bills by Sponsor or Keyword" hyperlink; then select "arbitration" from the "Keyword" dropdown menu; select "Search for Bill" button; select "H.0663") (last visited Nov. 15, 2010) (noting that the only action taken on the bill was in January and now the session is over).

31. A.B. 951, 99th Leg., Reg. Sess. (Wis. 2009).

32. S.B. 673, 99th Leg., Reg. Sess. (Wis. 2009).

33. *Compare* Hayes v. Oakridge Home, 908 N.E.2d 408, 416 (Ohio 2010) (holding that an arbitration agreement in a nursing home contract was not procedurally unconscionable because the resident was ninety-five years old nor was it substantively unconscionable), and Carter v. SSC Odin Operating Co., 927 N.E.2d 1207, 1220 (Ill. 2010) (holding that a state statute is preempted by the FAA with regards to the enforceability of an arbitration agreement in a nursing home contract), with Lawrence v. Beverly Manor, 273 S.W.3d 525, 529-30 (Mo. 2009) (holding that a wrongful death suit by a resident's son was not covered by the arbitration clause because such a cause of action was not on the behalf of the resident).

34. See *Prima Facie Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967) ("The unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts.").

35. The most prominent example of action by opponents of arbitration in nursing home contracts is the Fairness in Nursing Home Arbitration Act, which is similar in scope and purpose to both A.B. 951 and S.B. 673 in Wisconsin. Fairness in Nursing Home Arbitration Act, S. 512 & H.R. 1237, 111th Cong. (2009).

36. Justice.org, *The Real Life Consequences of Forced Arbitration*, <http://www.justice.org/cps/rde/xchg/justice/hs.xsl/2961.htm> (last visited Oct. 21, 2010).

Specific to Wisconsin is the case of William Kurth.<sup>37</sup> Kurth passed away while a resident in a nursing home in Racine County, Wisconsin.<sup>38</sup> Kurth's wife signed the nursing home contract, which included a binding arbitration agreement, before he entered the home.<sup>39</sup> Mrs. Kurth has asserted that she was rushed through the contractual process without adequate explanation, that she was on medication, and that she was eager to have her husband move to the new home because he would be closer to her than he was at the previous care facility.<sup>40</sup> After his death, the home offered to pay for some of his funeral costs, but the family refused.<sup>41</sup> After the Kurth's filed a claim against the home, the company filed a motion to dismiss the claim and compel the family to participate in binding arbitration.<sup>42</sup>

Wisconsin Assembly Bill 951 and Senate Bill 673 would have prevented the nursing home from using the arbitration provision as a defense.<sup>43</sup> The Bills, as filed, would have declared such agreements against the public policy of Wisconsin, which would force both residents and care providers to use the courts to resolve disputes.<sup>44</sup>

## 2. The Bill

This legislation was filed both as Assembly Bill 951 and as Senate Bill 673.<sup>45</sup> The Assembly Bill was sponsored by Representatives Barca, Mason and Roys and co-sponsored by Senator Taylor, who also sponsored the same legislation in the Senate.<sup>46</sup>

This legislation adds to Chapter 895 in the Wisconsin Statutes on Damages, Recovery and Miscellaneous Provisions Regarding Actions in Court.<sup>47</sup> Specifically, the bill covers contracts, agreements and covenants between residents and facilities.<sup>48</sup> The bill covers facilities that are primarily inhabited by seniors or those with developmental disabilities, but exempts some residential facilities for religious order members<sup>49</sup> and facilities where all of the residents could exit the facility in an emergency by their own power.<sup>50</sup> However, the bill does provide that agreements made after an injury or harm are not affected by the legislation, which would allow parties who begin in litigation to divert their dispute to arbitra-

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37. See *In re Kurth v. Kindred HealthCare, Inc.*, 765 N.W.2d 581 (Table) (Wisc. 2009) (dismissing the Kurth Estate's petition for review); see also Justice.org, The Real Life Consequences of Forced Arbitration, <http://www.justice.org/cps/rde/xchg/justice/hs.xml/2961.htm> (last visited Oct. 21, 2010).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. See A.B. 951, 99th Leg., Reg. Sess. (Wis. 2009) & S.B. 673, 99th Leg., Reg. Sess. (Wis. 2009).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* § 1.

48. *Id.*

49. Wis. A.B. 951 & Wis. S.B. 673 (for example, the bill exempts out convents and religious orders by using the definition for a "community-based residential facility" found in WIS. STAT. § 50.01(1g)(a)(2009)).

50. *Id.* §1 (using the definition found in WIS. STAT. § 50.01(1g)(d)).

tion by mutual agreement.<sup>51</sup> The constrictions in contracts that the bill specifically targets are arbitration clauses and any other limits on a resident's ability to redress their grievances and seek remedies in court.<sup>52</sup> Such constrictions would be void under this legislation as against the public policy of the State of Wisconsin.<sup>53</sup>

### 3. Support and Opposition

The Assembly never had a hearing on either Bill and both were deemed as failed to pass on April 28, 2010.<sup>54</sup> However, the Wisconsin Government Accountability Board lists the Wisconsin Association of Homes and Services for the Aging as opposing Assembly Bill 951 and Senate Bill 673 along with other insurance companies and assisted living provider organizations.<sup>55</sup> The listed proponents are the American Association of Retired People (AARP), the Alzheimers Association and the Wisconsin Association for Justice (formerly Wisconsin Academy of Trial Lawyers).<sup>56</sup>

Courts in Wisconsin and other jurisdictions have generally interpreted Wisconsin law and found arbitration agreements enforceable in the circumstances that would make the agreements void under this legislation.<sup>57</sup> Common defenses against such a clause would be lack of capacity, unconscionability, lack of agency and public policy.<sup>58</sup>

This state legislation also mirrors the federal Fairness in Nursing Home Arbitration Act, which only allows the enforcement of arbitration agreements made after an incident has occurred.<sup>59</sup> Proponents of the federal legislation argue that the legislative change better reflects the original intent of the Federal Arbitration Act (FAA) because an agreement made after an incident allows consensual arbitration, but does not impose a take-it-or-leave-it situation upon residents as a condition of admittance to the facility.<sup>60</sup> On the other side of the argument, the nurs-

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51. *Id.* § 1.

52. *Id.*

53. A.B. 951, 99th Leg., Reg. Sess. (Wis. 2009) & S.B. 673, 99th Leg., Reg. Sess. (Wis. 2009).

54. *Id.* (declared "failed to pass" on May 11, 2010), available at <http://www.legis.state.wi.us/2005/data/AB951hst.html>.

55. Wis. Gov't Acct. Bd., <http://ethics.state.wi.us/scripts/CurrentSession/legprops.asp?key=REGAB951> (last visited Aug. 22, 2010). Other opponents of the bill included American Family Insurance Group, Extencicare Health Services, Inc., FiveStar Quality Care, Inc., HCR Manor Care, Kindred Healthcare, Residential Services Association of Wisconsin, Sentry Insurance Group, Wisconsin Assisted Living Association, Wisconsin Association of Homes & Services for the Aging, Inc., Wisconsin Civil Justice Council, Inc., Wisconsin Counties Association, Wisconsin Defense Counsel (formerly Civil Trial Counsel of Wisconsin), Wisconsin Health Care Association, Inc., Wisconsin Hospital Association, Inc., & Wisconsin Insurance Alliance. *Id.*

56. *Id.*

57. WIS. STAT. § 788.01 (2009) ("A provision in any written contract to settle by arbitration . . . shall be valid, irrevocable and enforceable except upon such grounds as exist at law or in equity for the revocation of any contract.")

58. Rebecca E. Hatch, Cause of Action for Enforcement of Arbitration Clause in Long-Term Care Agreement, 41 CAUSES OF ACTION 2d pt. II.B.1-3 (updated March 2010).

59. Fairness in Nursing Home Arbitration Act, S. 512 & H.R. 1237, 111th Cong. (2009).

60. Press Release, Senator Russ Feingold, Feingold Introduces Consumer Justice Legislation (April 29, 2009), available at <http://feingold.senate.gov/record.cfm?id=312222>.

ing home industry asserts that arbitration is a more efficient and inexpensive way to solve disputes for all involved.<sup>61</sup>

#### 4. Conclusion

If arbitration is working as it should, this legislation should not be necessary. However, the legislation itself really has nothing to do with the results of an arbitration, but instead sets out a policy that before a dispute arises, long-term care residents should not be prematurely kept from the courts. What arbitration is facing in many cases, but particularly in the area of long-term care contracts, is a lack of faith in the claim that arbitration is really a good alternative to litigation.

Seniors and their friends and families are warned by organizations and attorneys not to sign contracts that include arbitration clauses.<sup>62</sup> Common sense dictates that overwrought family and seniors may be more inclined to sign a contract to get a family member into care and not spend hours and effort to parse through a contract. However, the reality likely is that many disputes are solved with more speed and efficiency through arbitration than litigation and simply being overwhelmed by a situation does not necessarily make an agreement unconscionable.

However, the question arises whether, even when a legal defense of unconscionability would fail, whether some manner of protection should be given by the legislature. Some, including some legislators, may think that an arbitration clause in a nursing home contract has not been freely bargained for and would answer the question of whether further protection is necessary and wise with a resounding yes.

However, there likely stories that are untold, because they are settled in arbitration, of positive experiences with arbitration and the resolution of a dispute between a long-term care facility and a senior and his family. Long-term care facilities deal with difficult situations and highly charged emotions. But, in simple, economic terms they are also expensive facilities for families; and long-term care facilities, despite their mission of providing care, are businesses. As costs increase, and litigation will increase costs, so will the cost and availability of care. What legislators may provide in protection under such legislation they may trade for decreased availability of care for some Wisconsin residents.

Everyone can benefit from more awareness of the ramifications of arbitration clauses and more closely reading contracts into which they enter, but declaring such clauses against public policy as a blanket edict is unwise. If a senior or family member truly was coerced, under duress, the clause is unconscionable or it is against public policy, then those protections still exist for seniors under the common law, but the original aims of arbitration can work and will work best when they are allowed to do so.

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61. *The Fairness in Nursing Home Act: Hearing on S. 2838 Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights*, 110th Cong., 9 (2008) (statement of Kelley Rice-Schild, Am. Health Care Ass'n & Nat'l Center for Asst'd Living), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_senate\\_hearings&docid=f:44741.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_senate_hearings&docid=f:44741.wais).

62. A Google search of "nursing home arbitration agreements" pulls up pages of law firms and organizations warning people not to sign nursing home contracts with arbitration clauses because such clauses limit people's rights.



*C. The Trend Toward Mandating Mediation Prior to Foreclosure Proceedings of Residences: Illinois Senate Bill 1933, Hawaii Senate Bill 1623 S.D.1, Minnesota Senate Bill 2170, and Vermont House Bill 590*

- Bill Numbers: Illinois Senate Bill 1933, Hawaii Senate Bill 1623 S.D.1, Minnesota Senate Bill 2170, and Vermont House Bill 590.
- Summary: These bills provide a mechanism to force foreclosing parties to participate in mediation with the homeowner prior to allowing foreclosure sale of the residence.
- Status: Illinois S.B. 1933 – re-referred to House Rules Committee; Hawaii S.B. 1623 S.D.1 – carried over to 2010 session; Minnesota S.F. 2170 – passed third Senate reading, referred to House Finance; Vermont H.590 – passed House, as amended.

*1. Introduction*

In November of 2008, a national survey of home mortgages in foreclosure showed that mortgagors were incurring an average loss of \$124,000 per foreclosure, while the loans themselves averaged just \$212,000.<sup>63</sup> This meant that lenders were losing 57% of the value of their investment by completing the foreclosures.<sup>64</sup> By September of 2009, foreclosure losses had increased to 65% of the value of the loans.<sup>65</sup>

On March 4, 2009, the United States Department of Treasury announced the Home Affordable Modification Program (“HAMP”), aimed at relieving the pressure on homeowners who have been locked-in to loan payments that they could not afford.<sup>66</sup> A recent Vermont Bar Journal & Law Digest article summarized HAMP by explaining:

Under the Treasury Department’s HAMP guidelines and directive, participating servicers are contractually required to review homeowners who are seriously delinquent (sixty or more days) on their mortgages to determine eligibility for an affordable loan modification. If a homeowner qualifies for a loan modification under the program’s objective criteria, the participating servicer must modify the loan to a monthly payment of principal, interest, taxes, and insurance that is no more than 31% of the homeowner’s gross monthly income, either by: (1) lowering the interest rate to as low as 2%; (2) extending the term of the loan up to forty years; or (3) forgiving some portion of the principal. The servicer’s obligation extend to mortgages that are currently in foreclosure, and the guidelines mandate that servicers stay foreclosures pending HAMP loan modifica-

63. Alan M. White, *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modification*, 41 CONN. L. REV. 1107, 1119 (2009).

64. Geoff Walsh, *Foreclosure Mediations: Can They Make a Difference?*, 43 CLEARINGHOUSE REV. 355, 355 (2009), available at <http://www.povertylaw.org/clearinghouse-review/issues/2009-nov-dec/walsh.pdf>.

65. *Id.*

66. U.S. Dept. of Treasury, *Making Home Affordable Summary of Guidelines* (March 4, 2009), available at [http://www.ustreas.gov/press/releases/reports/guidelines\\_summary.pdf](http://www.ustreas.gov/press/releases/reports/guidelines_summary.pdf).

tion review, and refrain from filing new foreclosures against homeowners who qualify for trial HAMP modifications.<sup>67</sup>

Since the start of the program in March 2009 mortgage servicers, representing more than eighty-nine percent of all outstanding home loans in the country, have begun participating HAMP.<sup>68</sup> However, the Treasury has reported that of the estimated 3,356,844 borrowers that are eligible for the program, only 117,302 have been offered permanent loan modification—one of the primary objectives of HAMP.<sup>69</sup>

In light of the recent, nation-wide economic downturn, with unemployment rates routinely on the rise and against a backdrop of an increasing rate of home foreclosures, state legislatures have begun making efforts to further relieve homeowners from the threat of losing their homes. A growing number of states have considered allowing homeowners to utilize mediation programs prior to allowing a lender or lienholder to proceed with foreclosure. These programs typically give the homeowner the opportunity to pursue mediation directly with the foreclosing party in an attempt to resolve the deficiency or lien amicably, without incurring the high social and economic cost of a foreclosure sale. The ability to impose such obligations and procedural requirements on lenders, or lienholders, as a prerequisite to foreclosure is “well within the scope of a state’s police power, particularly during a period of economic crisis.”<sup>70</sup>

Over twenty-five state and local foreclosure mediation programs have already been established around the country, and foreclosure mediation legislation has been proposed in at least nine other states.<sup>71</sup> This article illustrates the nationwide trend toward state-mandated mediation by outlining the most recent attempts that the legislatures of Illinois, Hawaii, Minnesota, and Vermont have made to reduce the huge economic burden of foreclosure, both on the homeowner and the lender.

## 2. *Illinois S.B. 1933: Homeowners’ Association Bill of Rights Act*<sup>72</sup>

On February 20, 2009, Sen. A. J. Wilhelmi introduced S.B. 1933, the Homeowners’ Association Bill of Rights Act.<sup>73</sup> Unlike some of the legislation proposed in other states, this Act would not alter the rights of lenders, but rather address foreclosure by homeowners’ associations for delinquencies in dues and other violations of the associations’ governing documents. The Act would require a

67. Grace B. Pazdan, *How Foreclosure Mediation Legislation Can Keep Vermonters in Their Homes (And Money in the Pockets of Mortgage Holders)*, 36 VER. B. J. & L. DIG. 24, 25 (Spring 2010).

68. U.S. Dept. of Treasury, *Making Home Affordable Program: Servicer Performance Report Through January 2010* (Feb. 18, 2010), available at <http://www.financialstability.gov/docs/press/January%20Report%20FINAL%2002%2016%2010.pdf>.

69. *Id.*

70. Walsh, *supra* note 63, at 361 (citing *Energy Reserves Group Inc. v. Kansas Power and Light Co.*, 459 U.S. 400 (1983); *East N.Y. Savings Bank v. Hahn*, 326 U.S. 230 (1945); and *Home Bldg. and Loan Ass’n v. Blaisdell*, 290 U.S. 398 (1934)).

71. Pazdan, *supra* note 67, at 25.

72. S.B. 1933, 96th Gen. Ass. (Il. 2009), available at <http://www.ilga.gov/legislation/default.asp> (follow the link for “1901-2000” under Senate Bills, and then follow the link on “SB 1933”).

73. *Id.*

homeowners' association to provide notice to the homeowner, twice, of any alleged violation before the association can "seek foreclosure, file suit, charge any fee... or take any other action against a homeowner . . . ." <sup>74</sup> It would provide the homeowner with the right to a hearing by the association, at no cost, to verify facts and seek resolution, and except with respect to disputes involving less than \$1,000, the right to one-half day of neutral mediation, with costs to be borne equally by the parties. <sup>75</sup>

### 3. *Hawaii S.B. 1623: A Bill for an Act Relating to Foreclosures*<sup>76</sup>

Hawaii S.B. 1623 was introduced on January 28, 2009, by Senators Hooser, Chun Oakland, and Espero. Hawaii residential property foreclosures increased two hundred thirty percent in 2008, resulting in nearly three thousand two hundred properties lost to foreclosure. <sup>77</sup> The bill recites that, "according to the Pew Charitable Trust, one in twenty-nine Hawaii homeowners are expected to experience foreclosure by the end of 2010." <sup>78</sup> The purpose of the act is to "ameliorate the deleterious effects of continued foreclosures of residential properties by requiring lenders to contact borrowers to explore options that could avoid foreclosure." <sup>79</sup> The bill would require lenders to notify homeowners of their right to negotiate a settlement to avoid foreclosure, and that mediation may be available. <sup>80</sup> The act does not specify the qualifications or actions necessary for the homeowner to require mediation when a lender has participated in other, less formal efforts to negotiate, though it implies that such a venue is available. <sup>81</sup> The act would further protect the tenants of a foreclosed property by requiring the foreclosing party to notify them of the foreclosure sale and, typically, no less than sixty days advanced notice to vacate. <sup>82</sup>

### 4. *Minnesota S.F. No. 2170: Homestead Mortgage Mediation (Second Engrossment)*<sup>83</sup>

The Homestead Mortgage Mediation act was introduced on February 4, 2010, by its authoring Senators Scheid, Higgins, Kelash, Moua, and Olson. It would amend the foreclosure prevention counseling laws that apply to properties consisting of between one and four dwelling units, where one of which are occupied by

74. *Id.* at 2-3 (follow the link for "Full Text" and then "Introduced").

75. *Id.* at 4-5.

76. S.B. 1623, 25th Leg., Reg. Sess. (Haw. 2009), available at [http://www.capitol.hawaii.gov/session2009/bills/SB1623\\_SD1\\_.htm](http://www.capitol.hawaii.gov/session2009/bills/SB1623_SD1_.htm).

77. *Id.* § 1.

78. *Id.*

79. *Id.*

80. *Id.*

81. S.B. 1623, 25th Leg., Reg. Sess. (Haw. 2009), available at [http://www.capitol.hawaii.gov/session2009/bills/SB1623\\_SD1\\_.htm](http://www.capitol.hawaii.gov/session2009/bills/SB1623_SD1_.htm).

<sup>81</sup> *Id.* § 1.

82. *Id.*

<sup>82</sup> *Id.* § 1.

83. S.F. 2170, 86th Leg., Reg. Sess. (Mn. 2010), available at <http://www.revisor.mn.gov/bin/bldbill.php?bill=s2170.2html&session=ls86>.

the owner.<sup>84</sup> The act grants the right of a mortgagor, who has received counseling services, to have the mortgage debt reviewed in a mediation proceeding with the state Office of Administrative Hearings.<sup>85</sup> If counseling services have not yielded a resolution, the counseling agency will be required to give the mortgagor a mediation request form, which can be sent to the Office of Administrative Hearings, along with a small fee, to begin the mediation proceedings.<sup>86</sup>

The act prevents a mortgagee from continuing the foreclosure proceedings at the time when the initial published notice must be given.<sup>87</sup> The act exempts mortgages that were refinanced or modified under the federal Home Affordable Refinance or Home Affordable Modification Programs.<sup>88</sup> If the parties participate in mediation proceedings, the period of time for redemption by the mortgagor is five months, instead of the usual six months.<sup>89</sup> The act passed third reading on May 8, 2010, with the rules being suspended and lie-over waived. The Senate filed first reading in the House May 10, 2010, and the bill was referred to the Finance committee.

### 5. Vermont H.590: An Act Relating to Mediation in Foreclosure Proceedings<sup>90</sup>

H.590, An Act Relating to Mediation in Foreclosure Proceedings, was introduced by Representatives Willem Jewett and Maxine Grad on January 27, 2010. Vermont, a relatively small state of just over 600,000 residents, saw 1924 foreclosure filings in 2009, an increase of more than one hundred twenty percent from 2006.<sup>91</sup> The House passed an amended version of H.590 on March 18, 2010, putting into place what has been touted as, “a big step toward protecting homeowners from mortgage servicer abused and encouraging alternatives to foreclosure where feasible and beneficial to both homeowners and mortgage holders.”<sup>92</sup> H.590 mandates the availability of mediation in foreclosures of primary residences across the state. The bill implements a foreclosure mediation program, by placing obligations on servicers to conduct HAMP loan modification review, and consider other available foreclosure alternatives through structured meetings facilitated by trained mediators.<sup>93</sup>

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84. *Id.* § 1.

85. *Id.*

86. *Id.*

87. *Id.* § 7, subd. 4.

88. *Id.* § 6, subd. 3.

89. S.F. 2170 § 3, 86th Leg., Reg. Sess. (Mn. 2010), available at <http://www.revisor.mn.gov/bin/bldbill.php?bill=s2170.2html&session=ls86>.

90. H.590, 2009-2010 Leg. Sess., Gen. Assem. (Vt. 2010), available at <http://www.leg.state.vt.us/docs/2010/bills/House/H-590.pdf>.

91. *Vermont Foreclosure Data by County*, Vermont Dept. of Banking, Insurance, Securities, and Health Care Admin., available at [http://www.bishca.state.vt.us/sites/default/files/Foreclosures\\_09-08.pdf](http://www.bishca.state.vt.us/sites/default/files/Foreclosures_09-08.pdf).

92. Pazdan, *supra* note 67, at 26.

93. *Id.*

## 6. Conclusion

Americans are clearly concerned with the increasing rates of unemployment across the country and the amount of people losing their homes to foreclosure, and all levels of government have begun responding. There is a trend beginning among state legislatures to require lenders and lienholders to enter into mediation with the homeowner as one method of preventing the economic and social detriments of foreclosure. Many of the efforts already in place have proven their effectiveness in reducing the rates of foreclosure, at least in the short term.<sup>94</sup> Given the current state of the national economy, with unemployment rates beyond nine-percent, and a weakening job-growth market, there is little doubt that more states will join the trend toward seeking alternatives to the foreclosure of residential homes.

### *D. Making Alternative Dispute Resolution Work in the Mobile Home Context*

- Bill Numbers:** California Assembly Bill 1803, Delaware House Bill 313, Florida Senate Bill 362 (companion, House Bill 1077).
- Summary:** These bills adopt different ways of dealing with disputes between tenants and landlords that occur on mobile home lots.
- Status:** California (failed passage in committee, reconsideration granted April 14, 2010); Delaware (reported out of committee on its merits March 31, 2010); Florida (died in Judiciary Committee April 30, 2010).

## 1. Introduction

The term mobile home is a misnomer because it is difficult for the owner to get up and move once rooted in a mobile home lot.<sup>95</sup> Even as far back as 1987, the expected cost to move to another location and reinstall the home was \$5,000-\$15,000.<sup>96</sup> This makes it difficult for mobile home owners to vote with their feet when a landlord increases their rent.<sup>97</sup> As a result, tensions between landlords and mobile home owners run high when the landlord attempts to make any changes to their living area. States are starting to recognize the high costs of having these disputes play out in the court system and have attempted to offer different low-

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94. Lisa Fleisher, *Report: Mortgage Mediation Helps Homeowners Avoid Foreclosure*, N.J.com, June 22, 2009, available at [http://www.nj.com/business/nj-real-estate/index.ssf/2009/06/report\\_mortgage\\_mediation\\_help.html](http://www.nj.com/business/nj-real-estate/index.ssf/2009/06/report_mortgage_mediation_help.html) (reporting that fifty-nine percent of participants in Connecticut's voluntary mediation program have obtained modifications); Douglas S. Malan, *Foreclosure Mediation Becomes Mandatory*, CONN. L. TRIB., June 8, 2009, <http://www.ctlawtribune.com/getarticle.aspx?ID=33993> (reporting that seven out of ten cases in the voluntary program are settled).

95. *Manufactured Housing Dispute Resolution Program: How Did MHDRP Start?*, Washington State Office of the Attorney General, <http://www.atg.wa.gov/mhdr.aspx> (last visited Oct. 1, 2010).

96. Bruce Stiffler, *Mediation of Mobile Home Landlord-Tenant Disputes: An Assessment of Government Agency Implementation of Mediation*, 14 MED. Q. 3, 55 (1996), available at <http://www3.interscience.wiley.com/journal/114073675/articletext?DOI=10.1002%2Fcrq.3900140106>.

97. While rent increases vary, large proportional increases of up to 100% are not uncommon. *Id.* at 55-56.

cost, effective methods of dealing with these disputes.<sup>98</sup> While it is evident that many states are following this trend, this article focuses on three recent examples of states trying to improve their dispute resolution process or starting a new program of dispute resolution.

In general, many states have had great success with their dispute resolution programs. In Washington, the Manufactured Housing Dispute Resolution Program was able to boast that in 2009 79% of complaints that it had jurisdiction to mediate were resolved in the negotiation phase of the program.<sup>99</sup> The program in Washington was adopted in 2007 and its success has led California to model California Assembly Bill 1803 after it.<sup>100</sup> While some states seek to find successful models to start their own program, other states are stuck with programs that are outdated and in need of reform. For example, Florida increased its mediation success rate from 32% to 54% simply by updating the qualifications needed to be a mediator and the timing of their actions.<sup>101</sup> Before 1990 the state employed four mediators who were college graduates that took a 20 hour class on mediation and were put under great time pressures.<sup>102</sup> After 1990 the state had the parties use outside, qualified mediators who had no time constraints.<sup>103</sup>

This article examines bills from three states. The California bill sets up a new program modeled after Washington's program in which the Attorney General receives complaints, conducts investigations, arranges negotiations, determines violations and fines, and makes a database of complaints and resolutions.<sup>104</sup> In Delaware, the proposed bill is meant to increase the chances of dispute resolution working by making sure the dispute resolution specialist is objective and disinterested, forcing mediation if the Director recommends it (and if unsuccessful forcing a choice between litigation or binding arbitration) and by imposing sanctions on parties if a good faith effort is not evident.<sup>105</sup> The Florida bill updates their program by letting courts refer disputes to binding arbitration, with the consent of

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98. In fact, there are 27 states that offer some form of dispute resolution services for mobile home disputes. *Manufactured Home Dispute Resolution Program*, U.S. Department of Housing and Urban Development, <http://hud.gov/offices/hsg/ramh/mhs/mhdrp.cfm> (last visited August 24, 2010). As an example, Florida currently lets mobile home owners or landlords request mediation by the Florida Division of Condominiums, Timeshares, and Mobile Homes, and if the process does not work and results in civil litigation, then the court may refer the dispute to nonbinding arbitration. FLA. STAT. ANN. §§ 723.037(5), 723.038 & 723.0381 (West, Westlaw through 2010).

99. *Manufactured Housing Dispute Resolution Program: 2009 Annual Report to the Washington State Legislature*, 2, Washington State Office of the Attorney General, available at [http://www.atg.wa.gov/uploadedFiles/Home/Safeguarding\\_Consumers/Manufactured\\_Housing\\_Dispute\\_Resolution\\_Program/Stats\\_and\\_Outcomes/2009MHUannualReportFinal.pdf](http://www.atg.wa.gov/uploadedFiles/Home/Safeguarding_Consumers/Manufactured_Housing_Dispute_Resolution_Program/Stats_and_Outcomes/2009MHUannualReportFinal.pdf).

100. Assembly Committee on Housing and Community Development, *Bill Analysis: AB 1803*, 8 (April 13, 2010), available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1801-1850/ab\\_1803\\_cfa\\_20100413\\_122926\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1803_cfa_20100413_122926_asm_comm.html).

101. Stüfel, *supra* note 90, at 60, 62.

102. *Id.*

103. *Id.*

104. A.B. 1803, 2009-10 Reg. Sess. (Cal. 2010), available at <http://www.assembly.ca.gov/acs/acsframeset2text.html> (for "(2009-2010) Current" session, enter 1803 for "Bill Number" and click "Search" and then click on the "PDF" version of the amended bill text).

105. H.B. 313, 145th Gen. Assembly (Del. 2010), available at <http://legis.delaware.gov/LIS/LIS145.nsf/vwlegislation/HB+313?0pendocument> (follow the link "legislation" for full text).

both parties, after mediation is unsuccessful instead of only being able to refer the dispute to nonbinding arbitration.<sup>106</sup>

## 2. California Assembly Bill 1803

This bill was introduced on February 10, 2010 in order to create a new program called the "Mobilehome Residency Law Mediation Act."<sup>107</sup> As amended, the bill would require the Attorney General to administer a mobile home dispute resolution program by making the office produce information on the program for interested parties, contact known landlords to have them post information about the program on their premises, perform dispute resolution activities (investigations, negotiations, determinations of violations, assessing fines), make a database of complaints, and make written determinations of whether a violation occurred if negotiations failed so that the violative party must cure their problems.<sup>108</sup>

The bill states that the intention of the California legislature is to create a more efficient way to solve disputes that arise from violations of the current Mobilehome Residency Law.<sup>109</sup> The basic structure of the program is that landlords or tenants can make complaints to the Attorney General who has the discretion to initiate the dispute resolution process whereby the dispute is investigated, the AG begins negotiations between the parties if it is deemed appropriate, and if no resolution is reached then the AG must make a determination of violations to get the offending party to comply with his or her obligations.<sup>110</sup> If the violation is not fixed then the AG can take action to further address the situation, and the aggrieved party can always make use of the court system outside of the dispute resolution program.<sup>111</sup>

The Assembly Committee for Housing and Community Development voted down a motion to pass and refer the bill to the Judiciary Committee, but said it could be reconsidered later, questioning "whether the Attorney General's office is the right place to house this type of dispute resolution program, and whether the structure of the program as proposed is appropriate and legally sound."<sup>112</sup> This occurred on April 14, 2010 and there has been no action on the bill since.<sup>113</sup>

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106. S.B. 362, Fla. Senate – 2010 (Fla. 2010), available at <http://www.flsenate.gov/data/session/2010/Senate/bills/billtext/pdf/s0362c1.pdf> (same as H.1077, Fla. House – 2010).

107. A.B. 1803, 2009-10 Regular Session (Cal. 2010), available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1801-1850/ab\\_1803\\_bill\\_20100405\\_amended\\_asm\\_v98.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1803_bill_20100405_amended_asm_v98.pdf).

108. *Id.* § 1.

109. *Id.*

110. *Id.* § 3.

111. *Id.*

112. Assembly Committee on Housing and Community Development, *Bill Analysis: AB 1803*, 8 (April 13, 2010), available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1801-1850/ab\\_1803\\_cfa\\_20100413\\_122926\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1803_cfa_20100413_122926_asm_comm.html).

113. *Current Bill Status: A.B. 1803*, available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1801-1850/ab\\_1803\\_bill\\_20100414\\_status.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1803_bill_20100414_status.html) (last visited August 24, 2010).

### 3. Delaware House Bill 313<sup>114</sup>

This Delaware bill is fairly simple as it attempts to make a few changes to the already existing “Delaware Manufactured Housing Alternative Dispute Resolution Act” approved in 2006.<sup>115</sup> Relevant for the proposed changes, the current system lets a party submit a certificate to the Governor’s Advisory Council on Manufactured Housing to request use of the ADR process.<sup>116</sup> If there is a majority vote, the Council can then send the dispute to mandatory mediation. If the mediation is unsuccessful, then the parties will retain the right to pursue outside litigation.<sup>117</sup> This bill would have the Director of the Consumer Protection Division under the Attorney General’s Office make the decision of whether the dispute should go to mandatory mediation once they receive the certificate.<sup>118</sup> If mediation is decided upon and reaches no resolution, then the parties must choose between binding arbitration or litigation.<sup>119</sup> The bill further makes sure that the ADR specialist will be objective and disinterested.<sup>120</sup>

At the hearing before the Manufactured Housing Committee on the bill, it was explained that “the purpose of this bill is to strengthen the ADR process already in place.”<sup>121</sup> Further, the bill purposely stopped having the Governor’s Advisory Council on Manufactured Homes deal with the ADR process as it was merely a council set up to have landlords and tenants voice concerns to each other and educate each other.<sup>122</sup> As the council already makes most of its reports to the Attorney General’s Office, having the ADR process run under that office makes sense.<sup>123</sup>

There has been no action on the bill since it was reported out of the Manufactured Housing Committee on its merits March 31, 2010, although the Committee did express a desire to learn more about the role of the Governor’s Advisory Council on Manufactured Homes.<sup>124</sup> The Committee also seemed hesitant about making further changes to the ADR process before there was more evidence on how the current system was working.<sup>125</sup>

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114. H.B. 313, 145th Gen. Assembly (Del. 2010), *available at* [http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/$file/legis.html?open).

115. DEL. CODE ANN. tit. 25, § 7001A (2006).

116. *Id.* § 7001A(e).

117. *Id.* § 7001A(f)&(i)(1).

118. H.B. 313, 145th Gen. Assembly (Del. 2010), *available at* [http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/$file/legis.html?open).

119. *Id.*

120. *Id.*

121. *Manufactured Housing Committee Minutes*, Delaware House of Representatives (March 31, 2010), *available at*

[http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis145.nsf/vwLegislation/HB+313/$file/legis.html?open).

122. *Id.*

123. *Id.*

124. *Committee Report on H.B. 313*, Delaware House of Representatives (March 31, 2010), *available at*

<http://legis.delaware.gov/LIS/lis145.nsf/d81ce478bd9ae572852568730079e2fe/4abd66ee4be6c9a852576f7006797b7?OpenDocument>.

125. *Manufactured Housing Committee Minutes*, Delaware House of Representatives (March 31, 2010), *available at*

<http://www.google.com/url?sa=t&source=web&cd=4&ved=0CCMQFjAD&url=http%3A%2F%2Fwww>



#### 4. Florida Senate Bill 362<sup>126</sup>

This bill also attempts to revamp a dispute resolution program already in place. Florida law currently lets mobile home tenants request the use of the dispute resolution process for disputes over rent increases by the Florida Division of Condominiums, Timeshares and Mobile Homes.<sup>127</sup> If the initial mediation process is unsuccessful and one of the parties files a civil court case, then the presiding judge may refer the dispute to nonbinding arbitration.<sup>128</sup> If a party is unhappy with the arbitration decision and continues the case by filing for a trial de novo, then the judge will not be able to see the arbitration decision until after he or she has ruled on the merits.<sup>129</sup>

In order to slightly alter the mechanism, this bill would let the judge refer the dispute (only after it has not been resolved in mediation and a party files a civil action) to binding arbitration, provided he has the consent of both parties.<sup>130</sup> Further, if after arbitration a party files for a trial de novo, the judge can see the arbitration decision even before he makes a ruling on the merits.<sup>131</sup>

Thus, the bill is similar to the proposed bill in Delaware, considering it explicitly points out that the parties of a failed mediation can decide to use binding arbitration under the overall statutory scheme. After finally making it to the Judiciary Committee, the bill officially died on April 30, 2010.<sup>132</sup>

#### 5. Conclusion

Many states have started using some sort of dispute resolution process for disputes between mobile home owners and landlords. While results have been promising enough to prompt new states to propose programs of their own such as California, the current batch of programs are not perfect, as evidenced by the proposed tinkering of the programs in Delaware and Florida. The proposed California program was comprehensive as it has the Attorney General perform many functions while the Delaware and Florida programs simply give mediation services to those who request it and let the court system handle the rest (while keeping the option of binding arbitration available). It is unclear which approach yields more benefits, but it is certainly clear that states with smaller dispute resolution programs wish to update them to increase their efficiency.

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w.dehousedems.com%2Fpdfs%2FManufactured\_Housing\_Committee\_Mintues\_033110.pdf&ei=55d1TKeuFsKSjAfpPixBg&usq=AFQjCNEQrGUBE1UkA3T2UT82FDrc5WrSmg.

126. S.B. 362, Fla. Senate – 2010 (Fla. 2010), available at

<http://www.flsenate.gov/data/session/2010/Senate/bills/billtext/pdf/s0362c1.pdf> (same as H.1077, Fla. House – 2010).

127. FLA. STAT. §§ 723.037(5) & 723.038.

128. *Id.* § 723.0381(2).

129. *Id.*

130. S.B. 362, 2010 Leg., Reg. Sess., (Fla. 2010), available at

<http://www.flsenate.gov/data/session/2010/Senate/bills/billtext/pdf/s0362c1.pdf> (same as H.1077, Fla. House – 2010).

131. *Id.*

132. Senate 0362: Relating to Mobile Home Park Lot Tenancies [CPSC], Bill Information, available at

[http://www.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2010&billnum=362](http://www.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2010&billnum=362).

## II. HIGHLIGHTS

*A. Utah Senate Bill 167*<sup>133</sup>

Senate Bill 167 was introduced on February 5, 2010 by Senator John L. Valentine.<sup>134</sup> This legislation makes comprehensive changes to the state's regulation of alcoholic beverages.<sup>135</sup> Specifically, the bill provides for arbitration as a remedy in disputes between suppliers and wholesalers of alcoholic beverages.<sup>136</sup> The law lays out the process for the parties to choose an arbitration panel and cross-references the new law for liquor supplies and wholesalers with the Utah Uniform Arbitration Act.<sup>137</sup> The purpose of the law is to streamline disputes between wholesalers and suppliers. The bill was signed into law on March 29, 2010.<sup>138</sup>

*B. Pennsylvania House Bill 2319*<sup>139</sup>

House Bill 2319 was referred to the Labor Relations Committee on March 12, 2010.<sup>140</sup> If enacted, the bill would have amended the Public Employees Relations Act as it relates to guards at correctional or mental institutions.<sup>141</sup> Under the proposed legislation, arbitrators in wage disputes would have been bound to ensure that captains, lieutenants and first level supervisors receive an increase of no less than the highest-ranking corrections officer in the bargaining unit.<sup>142</sup> This legislation's purpose was both to constrain the arbitrator and to exercise more power over the collective bargainers on the part of the employees.<sup>143</sup>

*C. Vermont House Bill 691*<sup>144</sup>

House Bill 691 was referred to committee on February 2, 2010. If enacted, the bill would add e-bullying to the definition of bullying, require anti-bullying policies that would rival existing anti-harassment policies and establish that the bullying of a student by another student is a civil offense.<sup>145</sup> Under the legislation, school boards would be required to develop bullying prevention policies in conjunction with their current polices to stop harassment and hazing.<sup>146</sup> As a part of their plan to prevent bullying, school boards are encouraged to provide alternative

133. S.B. 167, 58th Leg., Gen. Sess. (Utah 2010) available at <http://le.utah.gov/~2010/htmdoc/sbillhtm/sb0167.htm>.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. H.B. 2319, 194th Leg., Sess. (Pa. 2010) available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2009&sessI nd=0&billBody=H&billTyp=B&billNbr=2319&pn=3344>

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. H.B. 691 (Vt. 2010) available at <http://www.leg.state.vt.us/docs/2010/bills/Intro/H-691.pdf>.

145. *Id.*

146. *Id.*

disputes resolution methods, such as mediation, to complainants at any step in the process to determine whether the bullying has occurred.<sup>147</sup> The purpose of this legislation is to increase the school board's awareness and response to the problem of bullying in school.<sup>148</sup> The combination of school policies and the enactment of new punitive laws to punish bullying would provide tools for both school boards and local prosecutors.<sup>149</sup> This legislation was never heard in committee.<sup>150</sup>

#### *D. Nebraska Legislative Bill 1019<sup>151</sup>*

On January 20, 2010, Representative Haar introduced Legislative Bill 1019 to provide for a trails dispute board to resolve conflicts that arise between the county board and the natural resources district ("NRD") in relation to recreational trails.<sup>152</sup> The Bill would implement procedures for creating a trails dispute board in the county wherein the trail in question lies.<sup>153</sup> Upon a majority vote, the county board is given authority to establish a trails dispute board to consist of seven members; two members from the county board, two members from the NRD's board, and three members appointed by the Governor who reside outside the county at issue.<sup>154</sup> The selected trails dispute board will appoint a mediator to hear the dispute.<sup>155</sup> If a resolution cannot be reached, the trails dispute board may render a determination after holding a public hearing.<sup>156</sup> All costs are to be divided between the county board and the natural resources district.<sup>157</sup>

On January 22, 2010, Legislative Bill No. 1019 was referred to the Natural Resources Committee where it remains.<sup>158</sup>

#### *E. New Jersey Assembly 363<sup>159</sup>*

Assembly Bill 363 was pre-filed for introduction on January 12, 2010, and seeks to ensure neutrality among arbitrators involved in the negotiation of contracts for New Jersey's police and fire departments.<sup>160</sup> The Bill states that certain arbitrators are required to annually file a financial disclosure with the Public Employment Relation Commission.<sup>161</sup> Financial disclosures include particular sources of payments received by the arbitrator and members of his or her imme-

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. L.B. 1019, 2010 Gen. Assem., Reg. Sess. (N.E. 2010) (Fiscal Note), available at <http://nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB1019.pdf>.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Nebraska Legislature, L.B. 1019, available at [http://nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=9778](http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=9778).

159. A.B. 363, 2010 Gen. Assem., Reg. Sess. (N.J. 2010)

160. *Id.* (Statement of Sponsor Shaer, Greenwald), available at [http://www.njleg.state.nj.us/2010/Bills/A0500/363\\_11.PDF](http://www.njleg.state.nj.us/2010/Bills/A0500/363_11.PDF).

161. *Id.*

diate family.<sup>162</sup> The Bill also mandates the financial disclosure to list contact information “of all business organizations in which the arbitrator or a member of his immediate family had an interest during the preceding calendar year.”<sup>163</sup> If enacted, the legislature hopes that by mandating disclosures to be made public records they will emphasize the importance of impartiality of particular arbitrators.<sup>164</sup>

Since its introduction, the Bill was referred to Assembly Regulated Professions Committee, where there has yet to be a vote on the Bill.<sup>165</sup>

#### F. California Assembly Bill 1639<sup>166</sup>

California Assembly Bill 1639 was introduced on January 11, 2010 to give an extra option to homeowners to avoid foreclosure upon a breach of their mortgage obligations.<sup>167</sup> The bill would establish a Facilitated Mortgage Workout (FMW) Program in which the mortgagor could participate in conciliation sessions with the mortgagee to develop a loan modification plan before the mortgagee could start the process of exercising a power of sale in a nonjudicial foreclosure proceeding.<sup>168</sup> When a notice of default would be sent to a borrower, the lender would have to include information about the FMW Program and would also have to file such additional information with the office of the county recorder.<sup>169</sup>

The bill gives more duties to county recorders and creates an administrator of the Program to be appointed by the Governor and affirmed by the Senate.<sup>170</sup> A borrower who wishes to participate in the Program will need to submit certain information to the administrator and will need to take certain actions such as depositing half their current mortgage payment into the Program.<sup>171</sup> The administrator will be given the power to mandate what forms to fill out and what neutral conciliation officers are available, and the FMW Program must be completed within 60 days of the neutral’s nomination.<sup>172</sup>

On June 21, 2010 the bill was voted to be placed on the inactive file.<sup>173</sup>

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162. *Id.*

163. *Id.*

164. *Id.*

165. A.B. 363 (referred to Senate), available at <http://www.njleg.state.nj.us/bills/BillView.asp> (search “363” and follow link “A363” for general information on the bill).

166. A.B. 1639 § 1, 2009-2010 Legislature, Reg. Sess. (Cal.). General information on the bill is available at <http://www.assembly.ca.gov/acs/acsframeset2text.htm> (for the “2009-2010 Session” in the “Assembly” search bill number “1639”) (last visited Sept. 7, 2010).

167. Marisa Lagos, *Legislature Pushes For Foreclosure Relief*, SAN FRANCISCO CHRONICLE, April 8, 2010, available at [http://articles.sfgate.com/2010-04-08/news/20840097\\_1\\_loan-modification-tax-penalty-short-sale](http://articles.sfgate.com/2010-04-08/news/20840097_1_loan-modification-tax-penalty-short-sale).

168. A.B. 1639 § 1, 2009-2010 Legislature, Reg. Sess. (Cal.). General information on the bill is available at <http://www.assembly.ca.gov/acs/acsframeset2text.htm> (for the “2009-2010 Session” in the “Assembly” search bill number “1639”) (last visited Sept. 7, 2010).

169. *Id.* § 2.

170. *Id.*

171. *Id.*

172. *Id.*

173. A.B. 1639 Current Bill Status, available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1601-1650/ab\\_1639\\_bill\\_20100906\\_status.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1601-1650/ab_1639_bill_20100906_status.html) (last visited September 7, 2010).

G. Georgia Senate Bill 346<sup>174</sup>

Senator Chip Rogers says Senate Bill 346 will accomplish a massive overhaul of how property values are assessed for ad valorem tax purposes in order to protect homeowners from unfair assessments and to give them the right to appeal.<sup>175</sup> One of the taxpayer's options will be to request arbitration when he or she disagrees with the assessed value of their property within 45 days of receiving an annual notice from the county clerk documenting the estimated property tax.<sup>176</sup> The board of tax assessors must respond within 10 days and tell the taxpayer that they must submit their own appraisal within another 45 days.<sup>177</sup> Upon receipt of the certified appraisal the board of assessors has 45 days to either accept the appraisal or can reject it and notify the clerk of the superior court to make an order for arbitration.<sup>178</sup>

If the parties cannot agree on a qualified arbitrator who is a state certified appraiser, then the superior court judge will pick one.<sup>179</sup> The arbitrator shall consider one assessment value from each party and then make a ruling, with the losing party bearing the superior court fees and arbitrator fees (either the taxpayer or the board of assessors).<sup>180</sup> The biggest changes in the bill are to give the taxpayer 45 days instead of 30 to make his or her request and to give the taxpayer his requested assessment amount if the board of assessors fails to accept or reject his value after the 45 days.<sup>181</sup> This bill became law on June 4, 2010 after being signed by the Governor.<sup>182</sup>

H. Maine H.B. 994<sup>183</sup>

Maine H.B. 994 was signed into law by the Governor on June 15, 2009.<sup>184</sup> This bill amends the laws pertaining to foreclosures.<sup>185</sup> It establishes the mandatory foreclosure mediation program within the Court Alternative Dispute Resolution Service.<sup>186</sup> It requires the Housing Authority to notify mortgagor who is a party to a foreclosure about the mortgagor's rights and available resources as they relate to foreclosure, as well as the mandatory foreclosure mediation program.<sup>187</sup>

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174. S.B. 346 § 6-1(f)(3)(A), 2010 Gen. Assem., Reg. Sess. (Ga.), available at [http://www.legis.ga.gov/legis/2009\\_10/pdf/sb346.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/sb346.pdf) (last visited Nov. 15, 2010).

175. *Georgia Property Owners Triumph with General Assembly Passage SB 346*, Georgia RealEstateRama, April 30, 2010, available at <http://georgia.realestaterama.com/2010/04/30/georgia-property-owners-triumph-with-general-assembly-passage-sb-346-ID0198.html>.

176. S.B. 346 § 6-1(f)(3)(A), 2010 Gen. Assem., Reg. Sess. (Ga.), available at [http://www.legis.ga.gov/legis/2009\\_10/pdf/sb346.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/sb346.pdf) (last visited Nov. 15, 2010).

177. *Id.*

178. *Id.*

179. *Id.* § 6-1(f)(3)(B).

180. *Id.*

181. *Id.* § 6-1(f)(3)(A).

182. S.B. 346 Bill Summary, [http://www.legis.ga.gov/legis/2009\\_10/search/sb346.htm](http://www.legis.ga.gov/legis/2009_10/search/sb346.htm) (last visited Sept. 7, 2010).

183. H.B. 994, 124th Leg., Reg. Sess. (Me. 2010).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

*I. Maryland H.B. 472<sup>188</sup>*

Maryland H.B. 472 was signed into law by the Governor on May 20, 2010.<sup>189</sup> This bill requires an order to docket or complaint to foreclose on residential property to be accompanied by an additional filing fee, a specified final or preliminary loss mitigation affidavit, and, if applicable, a specified request for foreclosure mediation.<sup>190</sup> It requires the secured party to file a specified final loss mitigation affidavit and send to the mortgagor or grantor a copy of the affidavit and a request for foreclosure mediation form.<sup>191</sup>

III. CATALOG OF STATE LEGISLATION

Alabama

*Bills Enacted:* None.

*Other Legislation:* H.B. 20 (modifies the Revision Uniform Arbitration Act); H.B. 27 (allows for arbitration in collective bargaining for employees of political subdivisions); and H.B. 219 (adding alternative dispute resolution options for certain insurance claims).

Alaska

*Bills Enacted:* None.

*Other Legislation:* H.B. 395 (requiring arbitration for uninsured motorist claims); H.R. 5 (opposing Federal Employee Free Choice Act where binding arbitration would be imposed on employers); S.B. 143 (defines what constitute energy and transmissions corporations and requires they have a dispute resolution process in their bylaws); S.B. 251 (relating to the interstate compact on nurse licensure that says a dispute under the compact should go to arbitration); and S.J.R. 30 (urging China to engage in dispute resolution with representatives for His Holiness the Dalai Lama of Tibet).

Arizona

*Bills Enacted:* H.B. 2049 (continues the office of ombudsman-citizens aide to investigate the administrative acts of state agencies based on citizens' complaints); H.B. 2429 (states the terms of an agreement are not confidential in situations where the terms are necessary to enforce or obtain approval of an agreement reached in mediation); and H.B. 2430 (codifies the Revised Uniform Arbitration Act).

*Other Legislation:* H.B. 2644 (authorizes the Arizona Registrar of Contractors to offer an alternative complaint resolution process of binding arbitration); H.B. 2717 (causes state departments and employee groups to participate in a non-

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188. H.B. 472, (Md. 2010) available at <http://mlis.state.md.us/2010rs/billfile/Hb0472.htm>.

189. *Id.*

190. *Id.*

191. *Id.*

binding mediation process if they cannot come to an agreement); and H.B. 2739 (establishes the mandatory foreclosure mediation program to be used for nonjudicial foreclosures of deeds of trust on owner-occupied residential property).

### Arkansas

*Bills Enacted:* S.B. 62 (appropriates \$288,000 to the Alternative Dispute Resolution Commission); and S.B. 68 (appropriates \$20,000 for the Appellate Mediation Pilot Program).

*Other Legislation:* None.

### California

*Bills Enacted:* A.B. 343 (ratifies the Interstate Compact on Educational Opportunity for Military Children and requires the Interstate Commission to make a rule on both mediation and binding dispute resolution); A.B. 1090 (requires arbitrators to follow certain ethical standards and says certain standards are nonnegotiable and cannot be waived); and S.B. 877 (extends the repeal date of the law that permits any persons who have passed the bar to represent clients in arbitration).

*Other Legislation:* A.B. 1 (authorizes teachers to take a course in negotiation, mediation and conflict resolution, including peer mediation training, toward their individualized program of professional growth); A.B. 541 (allows a public agency and a contractor to mutually agree to resolve a claim through independent arbitration outside of the current law's specified procedures); A.B. 1517 (establishes a program of grant funding to establish alternative dispute resolution programs for special education); A.B. 1588 & 1639 (offers a mortgage workout program for borrowers who elect to participate and it requires lender and borrower go through an alternative dispute process); A.B. 1803 (requires the Attorney General to administer a mobile home dispute resolution program for disputes between landlords and mobile home tenants); and S.B. 1456 (existing law says that certain public agency decisions can be challenged both in court and in a mediation proceeding and this bill says the mediation proceedings should be conducted concurrently with any judicial proceedings).

### Colorado

*Bills Enacted:* H.B. 1064 (concerns a requirement that a student must complete an appeals process before filing a complaint with a group of neutral arbitrators relating to participation in extracurricular activities); H.B. 1278 (creates the office of the unit owners' association ombudsman to advocate, mediate and gather information for unit owners); and S.B. 171 (establishes the child protection ombudsman program to review and seek resolution of complaints concerning child protection services).

*Other Legislation:* S.B. 45 (requires a holder of a residential mortgage that wishes to foreclose to send information to the debtor regarding their right to mutually negotiate for an agreement to avoid foreclosure or participate in mediation).

Connecticut

*Bills Enacted:* H.B. 5270 (makes modifications to the foreclosure mediation program such as to extend the sunset date).

*Other Legislation:* H.B. 5283 (provides rigid timelines for the completion of municipal binding arbitrations); H.B. 5379 (creates a procedure for claimants in a construction contract arbitration proceeding to file an offer to settle for a specified sum and to get extra interest on the later award if the offer is rejected); S.B. 129 (establishes the Office of Condominium Ombudsman to investigate disputes and requires each condominium association to establish a dispute resolution process for unit owner complaints regarding compliance by the association with the law and association bylaws); and S.B. 222 (establishes a mediation program for medical malpractice actions).

Delaware

*Bills Enacted:* H.B. 49 (clarifies how to use the Court of Chancery for arbitration, particularly for disputes involving commercial, corporate and technology matters).

*Other Legislation:* H.B. 18 (lets any covered employee whose employment is terminated file a complaint and a demand for arbitration); and H.B. 313 (revises existing alternative dispute resolution methods for mobile home disputes to say that after binding mediation, the parties need to decide to file a civil action or to take their dispute to binding arbitration).

Florida

*Bills Enacted:* H.B. 821 (provides requirements, procedures and limitations for international commercial arbitration, provides requirements and restrictions on courts, and provides for the creation of arbitral tribunals).

*Other Legislation:* H.B. 75 (provides procedural requirements and limitations for plaintiffs, defendants, and courts in homestead property mortgage foreclosure actions and requires mediation in certain circumstances); H.B. 1077 (authorizes courts to refer mobile home park lot tenancy disputes to binding arbitration); H.B. 1529 (companion S.B. 2034) (governs the use of arbitration provisions in the medical field and lets arbitration agreements in certain contexts be voided at the consumer's option); S.B. 1452 (authorizes a mediator for the public records mediation program to issue an opinion as to whether a public record is open to the public upon payment of a fee); and S.B. 1962 (specifies the public policy of the state for interpreting an arbitration agreement outside any U.S. state or territory).

Georgia

*Bills Enacted:* S.B. 240 (revises the process for appealing property valuation assessments used for ad valorem tax purposes and allows for the appeals to be submitted to arbitration); and S.B. 346 (further revises the new process for appealing valuation decisions used for assessing ad valorem taxes).



*Other Legislation:* S.B. 137 (adopts the Interstate Compact of Educational Opportunity for Military Children which includes a provision that the Interstate Commission is to come up with rules for both mediation and binding dispute resolution); and S.B. 407 (authorizes the Commissioner of Insurance to let insurers sell individual medical and surgical health insurance policies in Georgia if they have been approved in certain other states and says no policies can be sold if they have a required arbitration of disputes provision).

Hawaii

*Bills Enacted:* S.B. 574 (Extends the condominium dispute resolution pilot project).

*Other Legislation:* None.

Idaho

*Bills Enacted:* H.B. 593 (Revises provisions regarding attorney's fees awards in arbitrations involving insurers who fail to timely pay an insured after proof of loss is furnished).

*Other Legislation:* None.

Illinois

*Bills Enacted:* H.B. 2445 (Modifies the procedure for selecting an arbitrator under the Illinois Public Labor Relations Act and the Illinois Educational Labor Relations Act); H.B. 2626 (Creates the Crossing of Railroad Right of Way Act, provides that disputes between public utilities and land management companies be submitted to non binding arbitration, allows for binding arbitration under some circumstances); H.B. 3691 (Provides that any balance in the Reviewing Court Alternative Dispute Resolution Fund be transferred into Mandatory Arbitration Fund); H.B. 5888 (Amends the Uniform Arbitration Act to provide that rules applicable to a dispute including deciding the dispute in accordance with conflict of law rules considered applicable by arbitrators or agreed to by the parties); S.B. 1715 (Amends the Illinois Public Labor Relations Act by establishing a schedule for commencing bargaining, requesting mediation in the event of a dispute, requesting arbitration in the event of an impasse, and requesting arbitration for public safety employee arbitration).

*Other Legislation:* None.

Indiana

*Bills Enacted:* None.

*Other Legislation:* None.

Iowa

*Bills Enacted:* S.B. 364 (Requires the creditor of a real estate mortgage to provide advance notice of foreclosure and to inform the owner of the availability

of counseling and mediation); S.B. 366 (Provides that prior to any hearing on emancipation of a minor, juvenile courts may stay the proceedings and refer the matter to mediation).

*Other Legislation:* None.

### Kansas

*Bills Enacted:* H.B. 2283 (Relates to mediation and appraisal of rural water districts).

*Other Legislation:* None.

### Kentucky

*Bills Enacted:* None.

*Other Legislation:* None.

### Louisiana

*Bills Enacted:* H.B. 698 (Provides that no automobile insurer shall use arbitration or binding mediation to determine fault for purposes of settling a claim resulting from an automobile accident for purposes of raising insurance premiums without notifying the insured of the percentage of fault prior to arbitration); S.B. 457 (Provides that failure to pay required arbitration fees constitutes default under the Louisiana Binding Arbitration Law; requires arbitrators to determine the admissibility, relevance, and materiality of evidence offered; allows for arbitrator to summon witnesses and documents); S.B. 567 (Provides for a procedure for mandatory arbitration of issues related to the collection or refund of sales and use taxes of State political subdivisions).

*Other Legislation:* None.

### Maine

*Bills Enacted:* H.B. 457 (Authorizes a court to appoint a parenting coordinator to oversee and resolve disputes that arise between parents in interpreting and implementing the final court order in a divorce judgment or a parental rights and responsibilities judgment); H.B. 875 (Provides protections for consumers subject to mandatory arbitration clauses; provides that a consumer arbitration agreement not allowed under federal law is void and unenforceable); H.B. 994 (Establishes a court-supervised mediation process in judicial foreclosure proceeding on owner-occupied residential properties); S.B. 403 (Amends home construction contract laws; relates for the option of a small claims action, binding arbitration, nonbinding arbitration, and mediation in advance of a lawsuit).

*Other Legislation:* None.

### Maryland

*Bills Enacted:* H.B. 472 (Authorizes the mortgagor in a foreclosure action on an owner-occupied residence to file a request for foreclosure mediation); S.B.

1123 (Authorizes a county or municipal corporation to adopt a specified local law regarding binding arbitration in specified collective bargaining for wages, benefits or terms and conditions of employment).

*Other Legislation:* None.

Massachusetts

*Bills Enacted:* None.

*Other Legislation:* None.

Michigan

*Bills Enacted:* H.B. 4455 (Creates a mediation program for mortgages of certain residential properties that are in default); H.B. 5501 (Provides for alternative dispute resolution in an action by a grandparent seeking a grandparenting time order).

*Other Legislation:* None.

Minnesota

*Bills Enacted:* H.B. 354 (Requires notice and mandatory mediation prior to commencement of mortgage foreclosure proceedings on homestead property); H.B. 1692 (Adopts the Uniform Arbitration Act providing for the arbitration of disputes).

*Other Legislation:* None.

Mississippi

*Bills Enacted:* None.

*Other Legislation:* None.

Missouri

*Bills Enacted:* None.

*Other Legislation:* None.

Montana

*Bills Enacted:* None.

*Other Legislation:* None.

Nebraska

*Bills Enacted:* Leg. 888 (provides for limited liability companies that have dissolved the opportunity to submit remaining disputes to arbitration or mediation); Leg. 800 (amends juvenile offender law to indicate procedures to be followed once juvenile has completed prescribed mediation).

*Other Legislation:* Leg. 1040 (provides for non-binding mediation when labor organizations and the municipal government are unable to reach a resolution with respect to collective bargaining agreements); Leg. 1019 (authorizes trail dispute boards to resolve conflicts between county boards and natural districts concerning recreational trails); Leg. 989 (amends correctional services law and offers mediation to resolve conflicts among two committed defenders as a reasonable alternative to placing a committed offender in solitary confinement);

### Nevada

*Bills Enacted:* None.

*Other Legislation:* None.

### New Hampshire

*Bills Enacted:* None.

*Other Legislation:* H.R. 207 (allowing a mediation or parental coordination to resolve disputes in relation to changing parental rights and responsibilities).

### New Jersey

*Bills Enacted:* None.

*Other Legislation:* S. 1346 (requires the development of an alternative dispute resolution policy in State departments, agencies, and other state authorities); Assem. 363 & S. 288 (requires arbitrators appointed by the Public Employment Relations Commission to file a public financial disclosure); Assem. 567 (amends law concerning negotiations between public fire or police departments by adding certain timeframes); Assem. 587 (amends collectively negotiated agreement law by extending the role of arbitration in this context); Assem. 818 (provides binding arbitration for disputes regarding the disciplinary action of school staff other than teachers); Assem. 966 (amends law related to mandatory arbitration for public fire and police departments); Assem. 1210 (provides for an alternative dispute resolution program to resolve disputes between two state agencies with respect to a public works project); S. 287 (provides for procedures to ensure the neutral selection of arbitrators in matters involving public employers).

### New Mexico

*Bills Enacted:* None.

*Other Legislation:* None.

### New York

*Bills Enacted:* Assem. 9898 (amends workers' compensation law to authorize an alternative dispute resolution program to settle workers' compensation claims).

*Other Legislation:* S. 6921 (authorizes alternative dispute resolution for manufactured homeowners who are subjected to unjustifiable rent increases); S.

6723 (amends executive law to prohibit the state and certain state entities from entering some contracts compelling employees to binding arbitration); S. 6641 (provides an ombudsman for school districts as well as parent participation boards); Assem. 9389 (amends public service law to require the notification to utility customers of their ability to access alternatives to arbitration or litigation).

### North Carolina

*Bills Enacted:* H.R. 961 (provides for mediation of public records disputes); S. 897 (establishes “The Current Operations and Capital Improvements Appropriations Act” that allows Medicaid recipients to mediate contested Medicaid cases).

*Other Legislation:* H.R. 1661 (appropriates funds for a mediation center for district court); S. 716 (provides for mediation of public records disputes); S. 1320 & H.R. 1886 (establishes mediation procedures within the process for Medicaid appeals).

### North Dakota

*Bills Enacted:* None.

*Other Legislation:* None.

### Ohio

*Bills Enacted:* None.

*Other Legislation:* H.R. 276 (authorizes mediation or arbitration of disputes under the Telecommunications Act of 1996); H.R. 431 (requires state courts to tax or require payment of certain fees related to arbitration proceedings).

### Oklahoma

*Bills Enacted:* S. 2043 (money owed to reinsurer decided by arbitration under the contract, or if no clause, then under the law); S. 2039 (arbitration exempt from initial discovery order); H.B. 2652 (makes it an administrative violation for an insurance representative to come to ADR workers compensation meeting and not have settlement authority); S. 1956 (clarifies law for the Agricultural Mediation Program).

*Other Legislation:* None.

### Oregon

*Bills Enacted:* H.B. 3617 (in a special district of a county district, if a city objects to the rate setting, the authorities shall submit to arbitration).

*Other Legislation:* S. 1046 (mediation between boards regarding psychologist prescription authority).

### Pennsylvania

*Bills Enacted:* None.

*Other Legislation:* H.B. 2319 (if collective bargaining between government and correctional employees breaks down with mediator, they submit to arbitration, but the arbitrator must ensure the captains and lieutenants and others don't get more compensation and benefits); H.B. 1847 (changes well permit application disputes to be resolved by dispute resolution); H.B. 1251 (provides an ombudsman for the Insurance Company Law).

### Rhode Island

*Bills Enacted:* None.

*Other Legislation:* S. 2684 & H.B. 7582 (establishes that arbitration is preferred for labor disputes and limits the instances in which an arbitration award can be vacated); H.B. 7581 (expands the scope of binding arbitration process to include monetary issues relating to teachers and non-educational employees and streamlines the binding arbitration process); S. 2379 (would require the state to cover the total cost of compulsory mediation for school teachers); S. 2381 (would require the state to cover the total cost of compulsory mediation for municipal employees); S. 2519 (establishes standards/procedures whereby a school committee may, within 5 days of a negative vote by an appropriating authority, request non-binding/fact-finding mediation to be conducted by a special master appointed by the superior court); S. 2212 (provides for fair/reasonable compensation of homeowners for removal/destruction of their residential property on leased land, and would provide for arbitration for a landowner/homeowner to resolve dispute over the compensation to be paid); H.B. 7228 (would authorize hospitals and health insurers to declare an impasse and submit to binding arbitration of the terms of agreements between hospitals and commercial health insurers).

### South Carolina

*Bills Enacted:* None.

*Other Legislation:* S. 1185 (mandating mediation for all actions in family court); S. 1056 (provides that a mobile home owner may seek arbitration through the Department of Consumer Affairs to provide factors the court may consider in determining the market rental rate).

### South Dakota

*Bills Enacted:* None.

*Other Legislation:* None.

### Tennessee

*Bills Enacted:* None.

*Other Legislation:* H.B. 3593 (creates a pilot project in Shelby County for voluntary mediation prior to the foreclosure of loans entered into under the Tennessee Home Loan Protection Act).

Texas

*Bills Enacted:* None.

*Other Legislation:* None.

Utah

*Bills Enacted:* S. 62 (makes changes to how someone can arbitrate a dispute having to do with motor vehicle insurance coverage); H.B. 284 (enacts the Uniform Collaborative Law Act); S. 191 (amends dispute resolution fees); S. 167 (adds arbitration as a remedy under the Alcohol Control Act); S. 105 (increases the amount that a party can receive in motor vehicle accident arbitration).

*Other Legislation:* None.

Vermont

*Bill Enacted:* H.B. 590 (mediation in foreclosure proceeding); H.B. 281 (commission on human remains to provide mediation of disputes); H.B. 689 (allows mediation, arbitration or litigation about sums due for assessment in common interest communities).

*Other Legislation:* H.B. 691 (use mediation or ADR to solve bullying in educational settings); H.B. 663 (require arbitration of medical malpractice claims); H.B. 546 (establishes an environmental court); H.B. 512 (require arbitration of medical malpractice claims); S. 241 (moves mediation from education to administrative department); S. 243 (mediation services provided as part of other services for autism).

Virginia

*Bills Enacted:* S. 270 (establishes the office of common interest community ombudsman); S. 606 (binding arbitration not allowed in a car title loan); H.B. 1344 (conflicting claims of coalbed methane are to be submitted to arbitration); S. 295 (keep mediation records open; open-end credit plan contracts include arbitration).

*Other Legislation:* None.

Washington

*Bills Enacted:* H.B. 1956 (ADR is to be used to resolve disputes between cities and churches regarding the housing of homeless people); H.B. 2801 (office of ombudsman is to take the lead on stemming bullying); H.B. 2925 (requires large cities that own a hydroelectric facility in another county to continue to make financial compensation payments to the county in the event an existing compensation agreement between the city and county expires and can initiate arbitration); H.B. 2935 (in all appeals to the environmental and land use hearing board, the board may schedule the case for mediation); H.B. 3209 (as applied to the ferry system and collective bargaining, healthcare benefits are not subject to interest arbitration and also requires negotiation between parties as to the dollar amount

spent on each employee for healthcare compensation); S. 5046 (provides for binding arbitration for any disputes arising from the collective bargaining agreement for symphony musicians); S. 6696 (arbitration within collective bargaining for educational employees), S. 6702 (mediation or arbitration to solve disputes between school districts and jails); S. 6726 (makes the government the public employer of language access providers for the purposes of collective bargaining).

*Other Legislation:* H.B. 3215 (incorporates ADR mediation into foreclosure proceedings); S. 6515 (ADR in community housing services); S. 6532 (if there is a disagreement between a provider and a health plan either party may initiate binding arbitration); S. 6579 (committee to develop dispute resolution program by Sept. 1, 2010); S. 6807 (expands the role of the Long-Term Care Ombudsman); S. 6815 (for marine employees of the Department of Transportation healthcare benefits not subject to interest arbitration, also requires negotiation between parties as to the dollar amount spent on each employee for healthcare compensation).

### West Virginia

*Bills Enacted:* None.

*Other Legislation:* H.B. 4664 (mandatory mediation in consumer disputes); H.B. 4259 (establishes a system for foreclosure mediation); H.B. 4189 (establishes an independent dispute resolution program for nursing homes); H.B. 2251 (provides rights to fire department employees of political subdivisions including arbitration for disputes); H.B. 2501 (provides for mediation or arbitration to solve disputes between public employees and political subdivisions); H.B. 2604 & H.B. 2631 (provides for mediation or arbitration to solve disputes between public employees and political subdivisions); H.B. 4011 (provides for compulsory arbitration for members of police or fire departments and their employer political subdivisions).

### Wisconsin

*Bills Enacted:* None

*Other Legislation:* A.B. 214 (before asking for specific performance of a post-termination contract agreement having to do with child custody, the petitioner must participate in good faith mediation); A.B. 951 & S. 673 (Nullifies certain arbitration agreements between a resident and a nursing home); A.B. 919 (an arbitrator will be the final decision maker on disputes having to do with the collective bargaining agreement); S. 567 (if the Department of Children and Families cannot agree on a rate with out-of-home providers they must engage in mediation); A.B. 647 (alters the dollar amounts in dispute to require arbitration between a condo board and a unit owner).

### Wyoming

*Bills Enacted:* None.

*Other Legislation:* None.



