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State Legislative Update

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STATE LEGISLATIVE UPDATE*

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I. STATE LEGISLATIVE FOCUS

A. Sticks and Stones May Break My Bones, but Dispute Resolution in Schools May Help Me

Bill Numbers:	Louisiana Senate Bill 633; Massachusetts Senate Bill 275.
Summary:	Providing ADR methods in public school and extracurricular activities.
Status:	2014 LA S.B. 633—enacted; 2013 MA S.B. 275—accompanied by a study order.

1. Introduction

The school setting is one that is unique to almost any experience in modern society. From the young children learning to deal with the stresses and pressures of growing up, to the occasionally overzealous parents looking to get involved in their children's lives, schools are a fertile petri dish for conflict. Yet, even though traditional areas of law have embraced forms of alternative dispute resolution, the concept has not taken hold in schools across the county.[1]

This legislative analysis will look to conflict and dispute resolution in schools, along with how that conflict has been traditionally managed. Next, this article will examine some of the benefits that can be achieved by implementing forms of alternative dispute resolution in schools and the limitations to these benefits. Finally, this article will focus on the legislative response to the ever-present epidemic of conflict in our schools, including recent pieces of legislation in Louisiana and Massachusetts.

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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 e-mail the Journal of Dispute Resolution Editorial Board at JDR@missouri.edu.

1. Steven S. Goldberg, *Dispute Resolution* in *Practice*: *Balancing Rights With Interests*, 15 No. 22 LEGAL NOTES EDUC. 1 (2003).

2. *The Background of Disputes in Schools and the Legislative Response*

The numbers surrounding conflict in schools is staggering. In the 1990s, America dealt with unprecedented levels of violence in civil society, and schools were not immune to the trend. From 1996-97, seventy-seven percent of high schools, seventy-four percent of middle schools, and forty-five percent of elementary schools reported one or more violent incidents within their confines.[2] Schools scrambled to combat these problems, but most of the responses were reactive rather than proactive. The majority of creative problem solving came from individual schools, rather than well-tailored legislative responses. Often these school policies failed to address glaring problems, such as the conflict between students outside of school.[3]

In the late 1990s, schools began to take the offensive with regards to curtailing the growing violence problems within their walls. States like Ohio began to implement alternative dispute resolution programs, such as peer-to-peer mediation and Students Offering Acceptance and Respect within participating school districts.[4] From 1997-99, select Cleveland Ohio schools saw favorable results with these programs, including strengthening student use of nonviolent conflict resolution, positive improvements in academic performance, reduced suspension rates, and a reduction of truancy.[5]

Even though these programs found great success in areas where they were implemented, little was done to ensure that these programs had any lasting effect on schools. Jennifer Batton, from the Ohio Commission on Dispute Resolution and Conflict Management, argued that statewide education statistics showed that problems revolving around conflict and dispute between students far outnumbered incidents related to alcohol, tobacco, and firearms, yet the latter received funding at the expense of the former.[6] Still, with the implementation of federal programs, such as No Child Left Behind, it became apparent that legislators were interested in fixing problems related to *performance* of school children, rather than problems related to *conflict*.

The problem of conflict and dispute in schools goes far beyond violence alone. Bullying within schools is another widespread epidemic facing students today, with some studies suggesting that as many as 15 percent of all students are bullied at some time.[7] One study even suggested that the number might be as high as 20 percent.[8] Bullying, sometimes extending beyond physical violence, can

2. Jeanne Asherman, Decreasing Violence Through Conflict Resolution in Schools (2002), *available at* http://www.mediate.com/articles/asherman.cfm (citing *Violence and Discipline Problems in U.S. Public Schools: 1996-1997*, National Center for Education Statistics (1998)).

3. Crystal L. Jones, *No Child Left Behind Fails the Reality Test for Inner-City Schools: A View from the Trenches*, 40 CUMB. L. REV. 397, 455 (2010) ("Often students and frustrated parents are told that if the conflict is carried on outside of school (which at least some parts of the conflict generally are), there is little that the school can do. It is only when and if a fight ensues at school that school administrators can act, and then only to suspend both students, regardless of who started the fight.").

4. *Id.*

5. *Id.*

6. *Id.* at 455-56 (citing Jennifer Batton, Ohio Comm'n on Dispute Resolution and Conflict Mgmt. in the U.S., Managing Conflict at School, *available at* http://www.creducation.org/resources/Success_Story_5/index.htm).

7. Daniel B. Weddle, *Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMP. L. REV. 641, 650 (2004).

8. *Id.*

have deep and long-lasting psychological impacts, affecting children's ability to function in a school setting.[9] Despite the concerns over bullying and its effect on children, federal and state laws have not adequately addressed the problem.

One of the main federal mechanisms for handling and resolving problems with bullying in schools is found in Title IX. Under these provisions, gender-based bullying falls under the umbrella of sexual discrimination, which is prohibited in any educational institution that receives federal funding.[10] Unfortunately, Title IX does little to require schools to take proactive measures in curing the problem of bullying.[11]

In *Davis v. Monroe County Board of Education*, the Supreme Court clarified that the only time a school official is liable for bullying is "where they [the school officials] are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."[12] Title IX therefore provides little-to-no incentive for educators to do anything to preemptively address the problems of peer conflict from the outset.

Other traditional federal remedies to combat bullying in schools involve children filing claims under 29 U.S.C. § 1983 and Constitutional claims for deprivation of due process rights, which have been described as having "fared no better - and, in fact, have fared much worse - than Title IX [claims]."[13] This inadequacy has its roots in the fact that courts have found extreme difficulty in equating that the action of the school is tortious by proxy for the tortious actions of other students.[14] What is clear from these federal programs is that the law has several mechanisms in place to retributively deter schools from allowing conflicts to occur, but there is still essentially no mechanism in place to realistically and proactively curb or remedy bullying.

State law has not been much better in directly addressing these kinds of problems. As Professor Daniel Weddle describes it, state law suffers from the same fundamental flaws as federal law, in that it requires an incident to have occurred before a school has any incentive to respond with substantive macro-level changes.[15] Much like its federal counterparts, the majority of conflict resolution legislation in states revolves around zero-tolerance bullying policies and remedies through tort, which has been described as "often too misguided and draconian to be sustained or to be effective."[16] These types of legislation often lack the critical funds necessary through appropriations to be carried out, as they should.[17]

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9. *Id.* at 647.
10. *Id.* at 659-60.
11. *Id.* at 661.
12. *Id.* (quoting Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999)).
13. Weddle, *supra* note 7, at 663.
14. *Id.* ("While some have been successful in finding relief with such approaches, most cannot clear the substantial doctrinal hurdles courts have placed in the path of those seeking to hold state actors liable for injuries inflicted in the first instance by private actors.").
15. *Id.* at 673.
16. *Id.* at 673-74.
17. *Id.* ("Teachers and administrators are generally poorly equipped to address the problem of bullying without training, so the anti-bullying statutes that do not guarantee funding and do not explicitly require effective training will likely be rendered impotent by school officials' lack of expertise.").

Through legislation that clearly touches on the subject, legislators at all levels seem to be abundantly aware of the problems at hand. What is overtly concerning is the fact that despite these efforts, little-to-no meaningful change has occurred with regards to eliminating conflict within our schools and addressing conflict in a healthy way. As a practical matter, conflict within schools is inevitable. That fact alone should not deter efforts to combat some of the results that empirical research has exposed in the last three centuries. If anything, experience should tell us that there is a hole in the way schools handle dispute resolution that may be perfect for a legislative response

3. The Benefits of Alternative Dispute Resolution in Schools

Mediation is one of the common forms of alternative dispute resolution. One of the problems with the current legislative response is that it is reactive in nature. Benefits of seeking mediation in schools is that such a process is less about assessing blame and punishment, like litigation, and more about addressing future problems.[18] Children can often function as the best mediators because their understandings of the facts are often "developmentally appropriate" to these disputes.[19]

Unlike typical forms of mediation, mediation programs within schools might also include, "hands-on lessons on active listening, communication approaches, conflict styles, anger management, conflict escalation and de-escalation, perspective taking, positions and interests, brainstorming, win-win problem solving, [and] negotiation."[20] Interestingly enough, research has shown that these mediation-like alternative dispute resolution programs are most effective when children are engaging with adults and parents, learning through their behavior, and involving parents in these discussions.[21]

Mediation within schools also has the added benefit of giving teachers and administrators more time to teach, with less time devoted to discipline. This will positively impact student "loyalty and morale, while teaching nonviolent conflict resolution measures that can be used throughout the remainder of their adult lives."[22] Added benefits also include reducing instances of vandalism, truancy, and suspensions.[23] These mediation programs aim to address underlying issues that cause the disputes to occur, as well as teaching children lifelong skills in resolving conflicts and disputes.[24]

With all of the apparent benefits with alternative dispute resolution programs in schools, questions remain as to why these programs have not caught on. The first answer revolves around the feasibility of implementing these programs.[25] Despite the possible benefits, hardly any guidelines exist with regards to the application, practice, and expansion of alternative dispute resolution programs in

18. Jeanne Asherman, *supra* note 2.
19. *Id.*
20. *Id.*
21. *Id.*
22. William S. Haft & Elaine R. Weiss, *Peer Mediation in Schools: Expectations and Evaluations*, 3 HARV. NEGOT. L. REV. 213, 215 (1998).
23. *Id.* at 215-16 (citing Albie Davis & Kit Porter, *Dispute Resolution: The Fourth "R"*, 1985. J. DISP. RESOL. 121 (1985)).
24. *Id.* at 215.
25. *Id.*

schools.[26] Therefore, teachers, students, and administrators attempt these programs without much help regarding what may or may not be effective.[27] Alternative dispute resolution within schools is less about a specific scientifically proven method or a concrete program, and more about an idea or a creative way at attempting to solve these problems.

Second, studies have cited several external factors, such as a lack of funding, which put a damper on the gains these programs have made.[28] In addition to these problems, the benefits that these programs claim will occur are often unsupported by the evidence following their implementation.[29] Finally, traditional alternative dispute resolution programs may be more concrete than abstract and may not be as effective in the school setting. It has been suggested, "mediation may not be the proper forum because by the time parents get to mediation, it may be too late."[30] Therefore, alternative dispute resolution in schools is perhaps best in theory, whereas practical concerns still exist to make implementation a difficult one.

One area of education that has been particularly receptive to creative forms of alternative dispute resolution is the field of special education. Through the All Handicap Children Act of 1975, and more recently in the Individuals With Disabilities Education Act, Congress has clearly shown a preference for relying less on "the adversarial and contentious methods found in the statute," and more in favor of the "collaborative methods of mediation and facilitation."[31] The federal government and states alike could use these models within special education to implement workable programs in the future.

4. The Legislative Response

Massachusetts has examined the possibility of implementing methods of alternative dispute resolution within its public schools. In 2013, Senator Bruce Tarr introduced Senate Bill 275 in Massachusetts.[32] The bill was filed on January 18, 2013 in the Senate.[33] Like many bills that have been introduced in the past few years, this bill was designed to introduce alternative dispute resolution to education.

The purpose of the bill was to teach students alternative mechanisms for dispute resolution in productive and effective ways, especially in an effort to reduce violence.[34] Section 71 of General Laws of Massachusetts governs public schools and public school education.[35] This bill would amend Section 71 to require the Board of Elementary and Secondary Education to include alternative dispute reso-

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26. *Id.* at 217.

27. *Id.*

28. Haft & Weiss, *supra* note 22 (Specifically, studies have noted "budgetary constraints, internal and local politics, pressures from parents, and other limitations that might be better accommodated if schools had a clearer picture of how to achieve their objectives.").

29. *Id.*

30. Goldberg, *supra* note 1, at 1.

31. Phillip Moses & Timothy Hedeen, *Collaborating for Our Children's Future: Mediation of Special Education Disputes*, 18 DIS. RES. MAG., 4, 5 (Summer 2012).

32. S.B. 275, 188th Commw. Ct., Reg. Sess. (Mass. 2013).

33. *Id.*

34. *Id.*

35. *See generally* Mass. Gen. Laws Ann. Ch. 71.

lution in the curriculum for students of all ages and grade levels.[36] The bill was referred to the joint committee on education on January 22, 2013.[37] Following the hearing on the bill, a study order was entered on March 13, 2014.[38] This order was reported favorably by the committee on education and was discharged to the Committee on House Rules on July 22, 2014.[39] Though study orders are sometimes simply quiet ways of killing bills, it will be interesting to see whether this bill gains any traction moving forward with the legislative process.

Not all dispute resolution in schools simply targets bullying or violence. In 2014, the state of Louisiana enacted Senate Bill 633.[40] Senator Dan Claitor of District 16 introduced the bill on April 1, 2014. Senate Bill 633 amends the provisions of the Louisiana statutes regarding extracurricular activities and school children.[41] The purpose of the bill is to require all interscholastic extracurricular athletic associations within the state, such as the Louisiana High School Athletic Association (LHSAA), to provide a third party arbitration mechanism for disputes surrounding eligibility of student athletes.[42] Otherwise, no school receiving public funds may be eligible to join such an organization.[43] The bill passed the Senate, by a final vote of 21-17.[44] The Governor signed the bill into law on June 4, 2014.[45]

This bill was met with criticism from the LHSAA because of potential increased cost to provide for arbitration.[46] It came as a result of the controversy surrounding Clement Mubungirwa, a student athlete in Baton Rouge, Louisiana. Mubungirwa was denied eligibility for his senior year of high school sports due to his age.[47] He was denied eligibility through the LHSAA, prompting legislative response.[48]

5. *Conclusion*

Just as playgrounds and lunchrooms are commonplace in nearly every school in America, so too are disputes between students, parents, teachers, and adminis-

36. *See* Mass. Gen. Laws Ann. Ch. 71, *available at* https://malegislature.gov/Bills/188/Senate/S275 ("Chapter 71 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after the word 'law' in line 115, the following sentence:- 'The board shall also establish standards for the inclusion in curriculum at all grade levels, frameworks designed to teach students methods of resolving interpersonal disputes in productive and effective ways and which shall discourage the use of violence and/or other forms of abuse in the resolution of such disputes.'").

37. *Id.*

38. *Id.*

39. *See* https://malegislature.gov/Bills/188/House/H4290/History.

40. *See* La. Stat. Rev. Ann. § 17:176 (2013).

41. *See* Open States Bill Tracker, *available at* http://openstates.org/la/bills/2014/SB633/#actions.

42. La. Stat. Rev. Ann. § 17:176(e) (2013) ("Notwithstanding any policy, rule, or regulation adopted by the governing authority of any public elementary or secondary school to the contrary, no student otherwise eligible to participate in an extracurricular activity, including interscholastic athletics, shall be limited in the number of such activities in which the student may participate during a school year.").

43. *Id.*

44. *See* Open States Bill Tracker, *available at* http://openstates.org/la/bills/2014/SB633/#actions.

45. *Id.*

46. Cole Avery, *LHSAA Arbitration Bill Heads to House Floor on Thursday*, THE MONROE NEWS STAR (May 21, 2014), *available at* http://www.theadvertiser.com/story/sports/high-school/2014/05/21/lhsaa-arbitration-bill-heads- - to-house floor-thursday/9382655 (last visited Aug. 28, 2014).

47. *Id.*

48. *Id.*

trators. Schools have a unique history dealing with disputes, including experiments with dispute resolution. The majority of dispute resolution in schools is implemented, and perhaps more importantly, funded at the local level. Given the prevalence of disputes in school, time will only tell if states like Louisiana and Massachusetts become trendsetters with regard to legislative alternative dispute resolution.

B. Rhode Island and Washington Foreclosure Mediation: A Work in Progress

Bill Numbers:	Rhode Island House Bill 8293; Washington House Bill 2723; Washington Senate Bill 6507.
Summary:	All three bills aim to modify and create a more uniform foreclosure mediation process.
Status:	Rhode Island H.B. 8293—adopted July 8, 2014; Washington H.B. 2723—effective June 12, 2014; Washington S.B. 6507—failed to pass on February 25, 2014.

1. Introduction

This article focuses on a trend across state legislatures involving alternative dispute resolution methods relating to property rights for landowners, homeowners, and those leasing property.[49] This article highlights Rhode Island H.B. 8293,[50] Washington H.B. 2723[51] and its companion bill, Washington S.B. 6507.[52] In order to create a uniform process across their respective states, these bills are attempting to improve existing mediation mechanisms being conducted during the foreclosure process.

2. Alternative Dispute Resolution in the Foreclosure Process

The foreclosure crisis that swept across the nation threatened or actually caused millions of people to lose their homes.[53] With an unprecedented number of foreclosures taking place, the inadequacies of the conventional foreclosure process were exposed, namely that the proceedings were designed with an assumption that mortgages were direct, between a lender and the borrower.[54] In

49. H.B. 7132, 2014 Leg., Reg. Sess. (R.I. 2014) (providing a process of binding arbitration for landowners and homeowners); H.R. Res. 8293, 2013 Leg., Reg. Sess. (R.I. 2014) (requiring mediation conferences for foreclosures due to unemployment and underemployment); S.B. 3072, 2013 Leg., Reg. Sess. (R.I. 2014) (requiring mediation conferences when foreclosure is due to unemployment or underemployment); H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014) (calling for pre-foreclosure conferences); S. Res. 6507, 63rd Leg., Reg. Sess. (Wash. 2014) (requiring homeowners facing foreclosure to meet with a housing counselor in an attempt to avoid foreclosure).

50. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014).

51. H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014).

52. S. Res. 6507, 63rd Leg., Reg. Sess. (Wash. 2014).

53. Lydia Nussbaum, *ADR's Place in Foreclosure: Remedying the Flaws of a Securitized Housing Market*, 34 CARDOZO L. REV. 1889, 1890 (2013).

54. *Id.* at 1890-91.

reality, this relationship had changed with recent changes to the mortgage industry.[55] After the crisis and true relationship were exposed, one of the main goals of state and local governments became finding a way to slow down or stop unnecessary foreclosures and keep homeowners in their homes.[56]

One of the ways that state and local governments tried to curb the wave of foreclosures was through the adoption of alternative dispute resolution methods.[57] Mandatory mediation became a step in the foreclosure process, forcing the homeowner and the loan servicer to meet and attempt to modify the loan.[58] Many states successfully adopted some form of mandatory alternative dispute resolution in foreclosure proceedings, and many of the ADR programs have proven effective.[59] As time has passed and many of these programs have been implemented, legislatures have strived to make the programs more effective and uniform across each respective state.[60]

3. The Bills

a. Rhode Island H.B. 8293

Representative Cale Keable introduced Rhode Island H.B. 8293 on June 5, 2014, and the governor subsequently signed the bill into law on July 8, 2014.[61] The bill amends Section 34-27-3.2 of the General Laws governing mortgage foreclosures and sales.[62] HB 8293 was introduced to fight the endangerment to the economic stability posed to the people of Rhode Island caused by the amount of foreclosures, unemployment, and underemployment.[63] As foreclosures have increased, the process for mediating foreclosures has evolved, but has not been standardized across the state. The bill's stated goal was to create a uniform system for foreclosure mediation.[64] The bill created a uniform standard that required early counseling in the foreclosure process in an attempt to achieve positive outcomes for homeowners and lenders.[65]

In calling for standard mediation conferences, the bill defines a mediation conference as a conference between the mortgagee and mortgagor with a mediator. The mediator determines if it is economically feasible for both parties to have an alternative to foreclosure. If the mediator finds the alternative feasible, mediation will continue until an agreement can be reached between the parties.[66] The

55. *Id.* at 1892 (the securitization of the mortgage industry had taken mortgages that were traditionally held by local banks, and spread them in pieces to investors around the world).

56. *Id.* at 1891.

57. *Id.*

58. *Id.* at 1891-92.

59. Nussbaum, *supra* note 53, at 1892.

60. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014).

61. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014), http://webserver.rilin.state.ri.us/BillText/BillText14/HouseText14/H8293A.pdf.

62. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014).

63. *Id.* (stating that many citizens have been impacted by foreclosures which have "lead to increases in unoccupied and unattended buildings and the unwanted displacement of homeowners and tenants who desire to live and work within the state.").

64. *Id.*

65. *Id.* (calling for "early HUD-approved independent counseling process in owner-occupied principal residence mortgage foreclosure cases").

66. *Id.*

bill originally required the mortgagor to be the owner of the property, but it was later amended to include heirs and devisees, provided the heir or devisee occupies the mortgaged property as a primary residence.[67] The act is limited to individual consumer mortgages on owner-occupied primary residences of one to four unit residential properties.[68] Foreclosure proceedings may not be initiated until the mortgagor has given the mortgagee notice of the right to first participate in a mediation conference.[69] The bill outlines the process for providing notice to the mortgagee as well as penalties that can be assessed to the mortgagor for failure to provide notice of the mediation conference requirement.[70]

b. Washington H.B. 2723 & S.B. 6507

i. Background

Washington enacted the Foreclosure Fairness Act (FFA) in 2011 to increase communication between lenders and borrowers.[71] The FFA required that a notice of pre-foreclosure options be sent to the borrower by first class mail and provided that a borrower may request a meeting.[72] The meeting could be held by telephone unless an in-person meeting was requested.[73] An in-person meeting was to be held in the county where the borrower resides.[74]

The FFA also created a mediation process for owner-occupied residential property.[75] In order for pre-foreclosure mediation to take place the borrower had to be referred to the Department of Commerce (Department), by a housing counselor[76] or an attorney.[77] The FFA specified time frames for mediation sessions,[78] regulated the exchange of documents between lender and borrower, and also capped the mediator's fee.[79] Lenders were required to report to the Department quarterly on the amount of residential properties for which they have issued a notice of default and pay 250 dollars for every property to the Department.[80] The

67. *Id.*

68. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014).

69. *Id.*

70. *Id.* (failure to mail notice within 120 days after date of default results in a penalty of $1,000 per month until the written notice is sent, with a cap set at $125,000 for each mortgagee; the money is paid to the mediation coordinator and then transferred to the state).

71. H.R. Final Bill Rep. on H.B. 2723, at 1 (2014), http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bill%20Reports/House/2723%20HBR%20FBR%2014.pdf (last visited Aug. 9, 2014).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* (owner-occupied property was defined as residential real property consisting of a single-family residence, a residential condominium unit, or a residential cooperative unit).

76. *See* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *available at* http://portal.hud.gov/hudportal/HUD?src=/states/washington/homeownership/hsgcounseling (last visited Oct. 6, 2014) (housing counselors are government agents that provide counseling on "homebuying, renting, reverse mortgages and default and foreclosure prevention").

77. *See supra* note 71.

78. *Id.* (the mediation session was to take place within 70 days of referral to the Department).

79. *Id.* (the mediator's fee was capped at $400 unless the parties agreed to pay a higher fee).

80. *Id.* (this reporting and payment requirement only applied to lenders issuing 250 or more notices in the previous year).

funds remitted to the Department were to be divided between the Department and housing counselors.[81]

ii. Washington Bills

Washington Representatives Gregerson, Rodne, Orwall, Jinkins, Robinson, Freeman, Takko, Farrell, Bergquist, Riccelli, Fitzgibbon, Senn, Ryu, Morrell, Ortiz-Self, Clibborn, Kago and Goodman sponsored House Bill 2723, introduced on January 28, 2014.[82] The bill was signed into law by the governor March 31, 2014 and became effective June 12, 2014.[83] The bill passed with complete support in the House and Senate.[84] The act amended several Washington code sections relating to foreclosures.[85]

Senators Hobbs, Angel, Mullet, Fain, Nelson, Hatfield, Darnielle, Benton, Pedersen and Frockt sponsored Senate Bill 6507 on January 30, 2014.[86] After a public hearing on February 4, 2014, the bill first went to the Senate Committee on Financial Institutions, then to the Housing & Insurance Committee on February 6, and finally placed with the Senate Rules "X" file,[87] effectively bringing an end to the Bill.

c. Changes Implemented by H.B. 2723 & Proposed by S.B. 6507

The House Bill and the Senate Bill were the same in many regards as to the changes they proposed to the FFA. It is now required that the mailing notice be sent by registered or certified mail, return receipt requested.[88] If the borrower requests an in-person meeting, the meeting must take place in the county where the property resides, unless the parties agree otherwise.[89] The report that lenders must provide to the Department must now include the efforts that were made to meet with the borrower, and they must also include what transpired.[90] The definition of what constitutes residential property was expanded from single-family residence, a residential condominium unit, or a residential cooperative unit to now include "real property of up to four units."[91] If the time to meet with the mediator

81. *Id.* (not less than 76% of the funds were to be used for housing counselors, and up to 13%, or $590,000, whichever greater, would go to the Department for implementing and operating the FFA).

82. H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014).

83. *Id.*

84. *Id.*

85. *Id.* (specifically amended were RCW 61.24.031, 61.24.163, 61.24.165, and 61.24.172; and reenacted and amended RCW 61.24.005).

86. S. Res. 6507, 63rd Leg., Reg. Sess. (Wash. 2014).

87. *Id.*, *available at* http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6507&year=2013 (last visited Aug. 9, 2014) (the Senate Rules "X" file is where bills are placed that are no longer eligible for consideration, this removes them from the calendar and daily status sheet in order to keep the lists from becoming too long).

88. H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014).

89. *Id.*

90. *Id.* (the report provides four options to be included in the report: (1) if the borrower responded, but did not request a meeting, this should be noted; (2) if a meeting was requested and held, the date, time and location needs to be specified; (3) if a meeting was requested, but the borrower did not appear, information about the scheduling of the meeting must be provided; (4) if the borrower did not respond, that should also be noted; the report also provides a space for explanatory comments).

91. *Id.*

lapses, the parties may still agree to enter into the mediation program, and the sessions are to be held in the county where the property is located.[92] The mediator's fee does not have to be authorized by both statute and Department, needing only one.[93] The allocations of funds were also changed.[94]

One area of differentiation between the House Bill and Senate Bill was the inclusion of provisions in the Senate Bill relating to deceased borrowers and successors in interest who occupy the primary residence.[95] It also provides for a person that has been awarded title to the property in a dissolution or legal separation.[96] Otherwise the changes to the FFA proposed in Senate Bill 6507 and those enacted by House Bill 2723 are the same.[97]

4. Discussion

The sweeping foreclosure crisis and the overwhelming response of ADR legislation was a great step in slowing and stopping the foreclosures of millions of homes. Now that some time has passed and the programs have had time to be implemented, it is becoming apparent that there are still changes that need to take place and that governments need to continue to evaluate and improve the foreclosure processes. Foreclosures have been on the decline since the height of the foreclosure crisis, but as recent as January 2014 there were 1.9 million mortgages in serious delinquency and facing foreclosure,[98] a number that is still too high and can be reduced. While the amount of foreclosures is improving due to a number of factors, including that ADR proceedings have been implemented, there are still improvements that can and need to be made.

In looking at the foreclosure situation as it currently stands, Rhode Island summarized it best by stating that the amount of foreclosures creates "a situation which endangers the economic stability of many of the citizens of [the] state . . . ."[99] With the growing foreclosures, states have sought to protect their economies and their citizens through legislation similar to Washington's FFA that was enacted in 2011. As these programs and laws have taken effect, it has become apparent that the programs are in need of some modification and uniformity across the states.[100]

The two bills passed and discussed above show that states feel the need to protect homeowners by providing opportunities between lenders, borrowers, and mediators in an attempt to resolve problems before the foreclosure process, allowing homeowners to keep their property while still paying lenders. The compulsory ADR process creates a right for the homeowner to negotiate with the loan ser-

92. *Id.*

93. *Id.*

94. H.B. 2723, 63rd Leg., Reg. Sess. (Wash. 2014) (no less than 71%, instead of 76%, must be used for providing counseling, up to 18% or $1.4 million is directed to the Department for implementation and operation of the FFA).

95. S. Res. 6507, 63rd Leg., Reg. Sess. (Wash. 2014).

96. *Id.*

97. *Compare* H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014), *with* S. Res. 6507, 63rd Leg., Reg. Sess. (Wash. 2014).

98. *CoreLogic National Foreclosure Report*, CORELOGIC, http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2014.pdf (Jan. 2014) (last visited Sep. 1, 2014).

99. H.R. Res. 8293, 2014 Leg., Reg. Sess. (R.I. 2014).

100. *Id.*

vicer and provides oversight of the lender's decision-making process. This oversight is very consumer protective and theoretically keeps loan servicers from taking an unwarranted harsh stance against borrowers.[101] The oversight, restrictions, and reporting requirements placed on lenders, such as those implemented by H.B. 2723,[102] and the fees that must be paid, show that states desire to exert more control over the foreclosure process, in an effort to assist homeowners and keep the economy from digressing again.

These bills also show that states are seeking to proactively modify the foreclosure process, and not wait for another foreclosure epidemic to sweep across their states before reforming the foreclosure mediation process. It is also an indication that foreclosures are still having a negative impact on states' economies such that the states want to continue to curtail its effects.

5. Conclusion

These borrower friendly bills depict a trend likely to continue, making it harder for lenders to foreclose on homes without providing additional options to borrowers who are in default. As legislatures rework the ADR requirements of foreclosures and continue to have a hand in the process, the current trend of decreasing foreclosures should continue.[103] With homeowners remaining in their homes, they will continue to live and work in their communities and states and contribute to improving the economy.[104] By creating uniform processes, the amount of foreclosures should decrease and the housing market and economy as a whole should continue to improve.

C. Sometimes the Wrong Choices Bring Us to the Right Places: Family Law's Place in Alternative Dispute Resolution

Bill Number:	New York Senate Bill 1230; Nevada Senate Bill 405.
Summary:	Existing family laws are amended; mandatory mediation programs are being piloted.
Status:	New York Senate Bill 1230—referred to the Senate Judiciary in January 2013, but failed to advance as of January 2014 when it was again referred to the Senate Judiciary; Nevada Senate Bill 405—passed in the Senate on May 23, 2013, approved by the governor on June 1, 2013.

101. Nussbaum, *supra* note 53, at 1891-92.
102. H.R. Res. 2723, 63rd Leg., Reg. Sess. (Wash. 2014).
103. *Decline in Foreclosures Reaches 'Important Milestone'*, *available at* http://realtormag.realtor.org/daily-news/2014/07/17/decline-in-foreclosures-reaches-important-milestone (last visited Oct. 6, 2014) (reporting that foreclosures in June 2014 were down 16% from June of 2013, marking the lowest they have been since June 2006, before the housing bubble burst).
104. H.R. Res. 8293, 2013 Leg., Reg. Sess. (R.I. 2014).

1. Introduction

"Our adversarial system, which works well in many other areas of law, is not designed to handle the intimate, emotional aspects of a family dispute."[105] Alternative dispute resolution refers to a variety of processes that can be used to help parties resolve disputes without litigation.[106] A number of benefits can stem from choosing alternative dispute resolution, including speedier resolution, less expensive resolution, and confidentiality.[107]

Alternative dispute resolution comes in many different forms, including negotiation, mediation, and arbitration.[108] Negotiation is a normal part of everyday life with which people are often familiar, but if parties to litigation are unable to negotiate a resolution on their own they can seek additional help through mediation or arbitration. In mediation, a neutral person facilitates party communication in an attempt to reach a mutually acceptable result.[109] The neutral mediator cannot force settlement between the parties.[110] Using arbitration, a neutral person "hears arguments and evidence from each side and then decides the outcome."[111] While arbitration is still less formal than litigation and evidence rules are relaxed, the arbitrator's decision is often binding on the parties.[112] Alternative Dispute Resolution methods are used in various realms of law, but it tends to work especially well for resolution of family law issues.

2. Alternative Dispute Resolution in Family Law

a. Non-Traditional Alternative Dispute Resolution Practices

In addition to negotiation, mediation, and arbitration, states may implement other alternative dispute resolution practices. In New York, the courts suggest the following alternative dispute resolution processes for family disputes: case conferencing, collaborative family law, neutral evaluation, parenting coordination, and summary jury trials.[113]

Case conferencing is when "a judge or the judge's representative meets with the parties and their attorneys to try to settle some or all of the issues in dispute before going to trial."[114] Unlike mediation and arbitration, "parties' participation is limited, and the focus is on narrowing the issues in dispute."[115]

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105. R. Michael Rogers & John P. Palmer, *A Speaking Analysis of ADR and Legislation for the Divorce Neutral*, 31 ST. MARY'S L. J. 871 (2000).
106. *Alternative Dispute Resolution*, NYCOURTS.GOV (Aug. 14, 2013), *available at* http://www.nycourts.gov/ip/adr/What_Is_ADR.shtml.
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Alternative Dispute Resolution*, NYCOURTS.GOV (Aug. 14, 2013), *available at* http://www.nycourts.gov/ip/adr/What_Is_ADR.shtml.
113. *Id.*
114. *Id.*
115. *Id.*

Collaborative family law gives couples a way to end marriage without going to court.[116] The process allows for support and guidance from parties' lawyers, but "if either spouse decides to go to court, both spouses must hire new lawyers."[117] The purpose is to motivate the divorcing couple to continue working toward an agreeable resolution.[118]

Neutral evaluation is when "a neutral person with subject-matter expertise hears abbreviated arguments, reviews the strengths and weaknesses of each side's case, and offers an evaluation of likely court outcomes in an effort to promote settlement."[119]

A third process is called parenting coordination. It is "a child-focused process in which a trained and experienced mental health or legal professional called a 'parenting coordinator' assists high-conflict parents to carry out their parenting plan."[120] "The purpose of parent coordination is to help parents resolve conflicts regarding their children in a timely manner and try to promote safe, healthy, and meaningful parent-child relationships."[121]

Finally, a summary jury trial can be used as an alternative dispute resolution process, allowing each side to present a shortened version of its argument to a jury, and the jury then makes an advisory decision.[122] This process can help parties evaluate the risks of going to trial.[123]

b. Policy Justifications for Alternative Dispute Resolution in Family Law

With the turn of the millennium, states and courts began to turn to alternative dispute resolution processes to confront divorce cases, which tend to be highly emotional.[124] Mediation and arbitration were common choices for divorce disputes because parties could actively participate in the negotiation to reach a workable resolution.[125] Even if the parties require some form of final adjudication, binding arbitration is well suited to take the place of litigation for these types of disputes.[126] This is due to the general belief that alternative dispute resolution processes have better long-term satisfaction.[127] Most importantly, mediation and arbitration allows parties an opportunity to select a decision maker with special expertise in family disputes.[128]

More and more states continue to incorporate alternative dispute resolution processes into family law resolution. Not only have individuals been seeking alternative dispute resolutions to reap the many benefits, legislatures have become focused on ways to necessitate alternative dispute resolution. What follows is a

116. *Id.*
117. *Id.*
118. *Alternative Dispute Resolution*, NYCOURTS.GOV (Aug. 14, 2013), *available at* http://www.nycourts.gov/ip/adr/What_Is_ADR.shtml.
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. Rogers & Palmer, *supra* note 105.
125. *Id.* at 873-74.
126. *Id.* at 874.
127. *Id.* at 873-74.
128. *Id.* at 874.

discussion of current or recent bills submitted in the New York, Montana, and Nevada legislatures pertaining to the significance of alternative dispute resolution in family law. These highlighted bills are indicative of a nationwide legislative trend.

3. The Bills

a. New York Senate Bill 1230

Senator Perkins sponsored New York Senate Bill 1230.[129] The stated purpose of the bill is to "amend the domestic relations law, in relation to the establishment and use of a parent-mediation program for child custody disputes."[130] The program would provide an orientation to the mediation process and would allow full participation from each of the parties.[131] The bill not only adds the parent-mediation program, but also provides a section governing the training of mediators.[132] The bill would "allow parents who are involved in a custody dispute to resolve their conflicts in a neutral setting, taking into consideration the best interests of the child (or children) involved in the dispute."[133] Senate Bill 1230 was also introduced to address the growing concern of judicial resources allocated to the influx of child custody cases by forcing courts to balance the best interests of children with haste.[134] In essence, the process affords the parties an opportunity "to develop a comprehensive parenting plan without unduly compromising each party's right to due process and a timely resolution of the issues."[135] The bill was referred to the Senate Judiciary in January 2013 but failed to advance as of January 2014 when it was again referred to the Senate Judiciary.[136]

b. Montana Senate Bill 555

Elli Boldman Hill sponsored Montana House Bill 555.[137] The purpose of the bill is to revise Montana's current laws on disputes within family law and domestic violence.[138] Montana law previously allowed a court to order mediation in parenting plan disputes, but House Bill 555 seeks to clarify the circumstances under which this can be done.[139] Parties must provide consent for a court to authorize mediation, at which point a specialized mediator can be appointed. The

129. S.B. 1230, 236th Leg., Reg. Sess. (N.Y. 2013).
130. *Id.*
131. *Id.* at § 79-b(b).
132. *Id.* at § 79-d.
133. *See* Memo to S.B. 1230, 236th Leg., Reg. Sess. (N.Y. 2013), http://assembly.state.ny.us/leg/?default_fld=&bn=A03986&term=2013&Summary=Y&Votes=Y&Memo=Y (last visited January 7, 2015).
134. *Id.*
135. S.B. 1230 §79-b(b), 236th Leg., Reg. Sess. (N.Y. 2013).
136. *Id.*
137. H.B. 555, 63rd Leg., Reg. Sess. (Mont. 2013).
138. *Id.*
139. *Id.*

bill clarifies when attorneys and others can be present at the mediation.[140] The governor signed the bill on April 30th, 2013.[141]

c. *Nevada Senate Bill 405*

In 2013, Nevada legislature introduced Senate Bill 405.[142] Senators Smith, Denis, Roberson, Woodhouse, Spearman, Atkinson, Kirkpatrick, and Sprinkle introduced the bill.[143] Among other stated purposes, this bill was created to amend Nevada Revised statutes 3.475 and 3.500.[144] Amended statute 3.475 would require district courts in counties with populations of 700,000 or more to establish a mandatory mediation program in cases that involve the custody or visitation of a child.[145] Similarly, amended statute 3.500 requires district courts in counties with populations of 100,000-700,000 to establish a mandatory mediation program in cases that involve the custody or visitation of a child.[146] Together, the bills would amend the statutes to require any district court in a county with a population of over 100,000 to establish the mandatory mediation program.[147] The bill passed in the senate on May 23, 2013 and the governor approved it on June 1, 2013.[148]

4. *Issues Drawing Attention of Legislatures*

There are a number of different family dispute issues considered by legislatures each year. Because the nature of family disputes is highly contentious and children are often involved, courts and legislatures often look for ways to ease the burden on the entire process.

The New York bill addresses a major concern plaguing courts across the nation—the enormous amount of judicial resources allocated to the influx of child custody cases. As suggested in the bill, courts are currently forced to balance the best interests of children with haste. Providing parent mediation can be a fitting solution to the problem.

Despite the apparent perfect fit, alternative dispute resolution can also have drawbacks, which require their own legislative attention. For example, while parent mediation may help solve the predicament with judicial resources, it still requires its own resources. Mediation is also only fitting if the mediators have adequate training. Lastly, mediation is not well-suited for all types of family disputes, such as disputes involving domestic violence.

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140. *Id.*
141. *Id.*
142. S.B. 405, 77th Leg., Reg. Sess. (Nev. 2013).
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. S.B. 405, 77th Leg., Reg. Sess. (Nev. 2013).

5. Conclusion

States appear to be trending toward the use of alternative dispute resolution in many family disputes, considering how to ensure the alternative processes provide satisfactory resolutions.

D. A House Divided: States Split on the Use of ADR to Advance Consumers or Business in the Housing Industry

Bill Numbers: Alabama House Bill 137; Connecticut Senate Bill 319; California Assembly Bill 993; Colorado Senate Bill 220; Delaware House Bill 234.

Summary: These bills restrict, expand, or reinforce the use of alternative dispute resolution as a method to solve disputes between construction companies and (1) customers holding a residential home contract, or (2) the community surrounding the ownership of homes.

Status: Alabama House Bill 137—in the senate judiciary committee; Connecticut Senate Bill 319—in the judiciary committee; California Assembly Bill 993—in the judiciary committee; Colorado Senate Bill 220—in the judiciary committee; Delaware House Bill 234—signed into law by governor July 15, 2014.

1. Introduction

The 2013-2014 legislative session brought a new wave of alternative dispute resolution bills across the United States. The most apparent trend was the regulation of the use of alternative dispute resolution within the housing industry, including phases such as the construction process for new homes and disputes within housing communities.

Some states aimed to protect and assist consumers with their disputes. This is seen in Connecticut Senate Bill 319, which proposed that a home construction contract is invalid if it contains a mandatory arbitration clause. On the other hand, some states proposed pro-business bills. California's legislature currently has a pending bill that would mandate both parties to waive their right to collect attorney fees in an arbitration hearing regarding construction contract disputes.

2. Background

Similar to other industries, the housing industry is moving away from the use of litigation to solve disputes, and moving toward methods in alternative dispute resolution. Recently proposed alternative dispute resolution bills have addressed two specific types of disputes that frequently come up in the housing industry: homeowner disputes, and construction disputes. These proposals manifest appar-

ent dissatisfaction with the inability of litigation to adequately resolve construction disputes.[149]

Regulation of alternative dispute resolution for the construction industry comes in a variety of ways. The American Arbitration Association (AAA) has specific standards to be employed for dispute resolution methods, for those who elect to use the AAA.[150] The AAA has composed a committee specially designated to collaborate with the construction industry to create rules of mediation and arbitration specifically targeted towards the construction industry.[151] Along with the restrictions and procedures imposed by the AAA, some states also regulate alternative dispute resolution methods by statute, as depicted by the following bills.

3. The Bills

a. Alabama House Bill 137

Mac McCutcheon, Terri Collins, and Mike Ball introduced Alabama House Bill 137 on January 14, 2014.[152] The bill proposed the creation of the Alabama Homeowner's Association Act, which would apply to homeowner associations responsible for the upkeep of the common areas of residential locations, and grants authority to implement assessments that could be enforced as liens against property.[153] More importantly, this bill would mandate every homeowner association to annually register with the Alabama Real Estate Commission (Commission). The Commission would be allowed to create an alternative dispute resolution process to handle disputes among homeowner associations and lot owners.[154] The Commission would also be authorized to charge a fee in order to participate in the alternative dispute resolution program.[155] The fee amount is to be established by the Commission, and collection of fees are to be given to the State Treasury, distributed only upon an order of the executive director of the Commission.[156]

House Bill 137 has moved seamlessly throughout the adoption process. It has yet to have a "nay" vote in any of the committees. The bill has passed through the house and will come before the Senate Judiciary Committee in four months.[157] If passed into law, this bill would grant lot owners a different venue to resolve issues with the association. A neutral third party will presumably encourage lot owners to voice concerns more liberally, expanding the use of alternative dispute resolution to benefit consumers.

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149. PETER HIBBERD AND PAUL NEWMAN, ADR AND ADJUDICATION IN CONSTRUCTION DISPUTES (1999).

150. *Construction,* AMERICAN ARBITRATION ASSOCIATION, *available at* https://www.adr.org/aaa/faces/aoe/cre/construction.

151. *Id.*

152. H.B. 137, 2014 Leg., Reg. Sess. (Ala. 2014).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

b. Delaware House Bill 234

Similarly, Delaware's House of Representatives was faced with a bill that would allow arbitration to be used in the context of housing disputes. Paul Baumbach introduced Delaware House Bill 234 on January 28, 2014.[158] The bill proposes that a community owner who increases their market rent shall be required to hold an informal meeting to discuss the increase.[159] If there are still dissatisfied individuals after the informal meeting between the community owner and homeowners or homeowner association representing the homeowners, any party who has not yet agreed with the market rent increase may use non-binding arbitration to resolve the fee increase dispute.[160] The governor signed this bill into law on July 15, 2014.

c. Connecticut Senate Bill 319

State Senator Joseph Crisco, Jr. introduced Connecticut Senate Bill 319 on January 23, 2013.[161] The stated purpose of the bill is to prohibit mandatory alternative dispute resolution clauses in certain construction contracts.[162] Home improvement or new home contracts would no longer be enforceable against consumers if they contained a clause obligating a party to participate in an alternative dispute resolution process.[163] Senate Bill 319 currently sits in the Judiciary Committee.[164] This bill would halt the mandatory arbitration trend bleeding into the housing construction field, supporting consumers with an anti-business proposition.

d. California Assembly Bill 993

Other proposed bills restrict both consumer and contractor, but ultimately the consumer is the disadvantaged party. Eric Linder introduced California Assembly Bill 993 on February 22, 2013.[165] This bill would amend the already existing law regarding contractors, called the Contractors' State License Law.[166] The existing law creates an arbitration process organized by the Contractors' State License Board (Board) to resolve issues between contractors and their customers.[167] The Assembly Bill 993 proposed several changes to the Contractors' State License Law.[168] This bill would deem a party who submits an issue to arbitration to have waived any and all rights to receive attorney fees, or to appeal an arbitrator's award of attorney fees.[169]

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158. H.B. 234, 2014 Leg., Reg. Sess. (Del. 2014).
159. *Id.*
160. *Id.*
161. S.B. 319, 2013 Leg., Reg. Sess. (Conn. 2013).
162. *Id.*
163. *Id.*
164. *Id.*
165. A.B. 993, 2013 Leg., Reg. Sess. (Cal. 2013).
166. *Id*; Section 7085.5 of the Business and Professions Code.
167. A.B. 993, 2013 Leg., Reg. Sess. (Cal. 2013).
168. *Id.*
169. *Id.*

Additionally, the Contractors' State License Law requires the Board to give each party a list of possible dates, locations, and times for the arbitration hearing and all parties must respond with the dates they can commit to the arbitration sessions within seven calendar days.[170] If a party does not respond within the time frame, the arbitrator is required to decide on a date without regard to the preference of the parties.[171] Assembly Bill 993 would require the parties to give the arbitrator their most convenient dates, and the arbitrator would pick among the dates that are convenient for both parties.[172]

Under the Contractors' State License Law, only persons with a direct interest in the matter being arbitrated would have the right to attend the hearing.[173] Any other person would only be allowed to attend with the arbitrator's permission.[174] The bill would change this limit by restricting the arbitrator's power to exclude non-parties from attending the hearing without good cause.[175] Furthermore, the Contractors' State License Law allows any party to record the hearing. The proposed bill would add that if one of the parties decides to record the hearing, the recording must be given to the auditor.[176] Assembly Bill 993 is currently before the Judiciary Committee for review.[177]

e. Colorado Senate Bill 220

Other bills addressing construction disputes extend the alternative resolution requirement. Senator Jessie Ulibarri introduced Colorado Senate Bill 220 on April 30, 2014.[178] This bill proposes to add and revise certain provisions of Colorado Revised Statutes 38-33.3-124. Senate Bill 220 would add a provision stating that once there is a requirement by the rules of a common interest community to mediate or arbitrate construction defect claims based on specific acts or omissions, that requirement is enforceable despite later revision to such rules.[179] This addition to the Colorado Revised Statutes would bind unit owners and homeowner associations to mediate or arbitrate issues with developers, contractors, architects, or other persons involved with the construction that are specifically stated in the common interest community's declarations, bylaws, or rules, even if these requirements are later revoked.

Additionally, Senate Bill 220 requires the arbitration hearing to be held in the judicial district of the common interest community, and the arbitrator must be a neutral third party.[180] This bill is currently postponed indefinitely in the Judiciary Committee.[181]

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170. *Id.*
171. *Id.*
172. *Id.*
173. A.B. 993, 2013 Leg., Reg. Sess. (Cal. 2013).
174. *Id.*
175. *Id.*
176. *Id.*
177. *Id.*
178. S.B. 220, 2014 Leg., Reg. Sess. (Colo. 2014).
179. *Id.*
180. *Id.*
181. *Id.*

4. Discussion

Mediation or arbitration gives consumers and homeowners the ability to solve their issues without having to face the cost, time, and for many homeowners—trauma—that is often associated with litigation.

Some of the bills expanding the use of alternative dispute resolution methods in the housing community are geared towards benefiting the consumers and homeowners, while others benefit businesses. There are no specific consumer or business favoritism trends among these bills. Some states are pro-business because of the increased employment opportunities that a business can bring to the state, along with the increase in tax revenue received. Other states aim to protect their vulnerable citizens from powerful businesses. Additionally, these bills differ as to who has the power to initiate the alternative dispute resolution process. Alternative dispute resolution is most helpful when the "little people" are given the power to use mediation or arbitration voluntarily as they wish.

Alabama House Bill 137 would create an alternative dispute resolution method to resolve disputes between lot owners and their homeowner association. Even though this bill is a great step in expanding alternative dispute resolution for the individual homeowner, it is limited in its helpfulness because the ability to create this dispute resolution process is in the hands of the Alabama Real Estate Commission. Homeowners are vulnerable to the Commission's decision. Therefore, if the Commission decides not to implement mediation or arbitration, the homeowners are left to turn to the courts for help.

Delaware has also moved towards expanding the use of alternative dispute resolution in the housing industry through House Bill 234. This bill would allow arbitration to be used in housing disputes regarding increased market rents. In contrast to Alabama House Bill 137, Delaware's bill gives the decision to use mediation or arbitration to individual owners. The ability to choose whether to use arbitration or mediation is essential to consumers. This allows a person to weigh the advantages and disadvantages of litigation versus the use of an alternative dispute resolution method.

The Connecticut Senate takes consumers' rights a step further through Bill 319, which actually prohibits mandatory alternative dispute resolution clauses in certain construction contracts. The construction company and the consumer still have the option to use arbitration to solve their disputes if both parties decide to do so.

This bill is the most consumer friendly bill among all the housing industry bills discussed so far. Consumers rarely read an entire contract in order to know that the contract contains a mandatory arbitration clause before signing. Once a dispute arises, consumers are generally surprised to learn that their only method of relief is arbitration. Even when the consumer knows about the arbitration clause, there is very little that an individual can do about it. This can lead to disproportionate bargaining power between businesses and their consumers. Many of these construction companies view their contracts as a "take it or leave it" document, and not as something that can be negotiated. Thus, if consumers voice their concerns about the mandatory arbitration clause in their contract, the construction company may simply refuse to conduct business with such individuals. These adhesion contracts are popular in the construction industry; therefore, the threat that a company will lose business to another company due to their mandatory

arbitration clause is practically nonexistent. The consumer often has no choice but to commit to a contract that has a mandatory arbitration clause. Connecticut Senate Bill 319 intervenes on behalf of the powerless consumers.

In contrast with Alabama, Delaware, and Connecticut, the Colorado Senate proposed a bill, which is disadvantageous to consumers. Colorado Senate Bill 220 mandates that once arbitration or mediation is required in certain situations, future rules changing such mandate will be invalid. Therefore, arbitration between unit owners or a homeowner association and construction personnel would be mandatory even if new rules dictate that arbitration is no longer required. This creates a situation in which rules cannot be modified in the future to represent the continuous changes in alternative dispute resolution policy.

California Assembly Bill 993 carries the potential of harming consumers that wish to use alternative dispute resolution methods in order to get construction contract issues resolved. If passed, this bill would obligate parties to waive all rights to receive attorney fees in arbitration hearings, while simultaneously prohibiting appeals based on an arbitrator's decision on such fees. Construction companies have more financial resources than most of their consumers. Therefore, the restriction on their ability to collect attorney fees will not deter them from using an attorney during the arbitration session. To the contrary, consumers will likely not be able to afford an attorney without the possibility of an attorney fees award.

5. Conclusion

Alternative dispute resolution has become a common way to resolve disputes. This trend emerges as legislatures increasingly attempt to control alternative dispute resolution processes used in home construction and management. Legislatures in Alabama and Delaware are attempting to increase alternative dispute resolution by allowing issues to be resolved outside of the court system if the parties wish to do so. Some states, like California, swing the opposite direction and are attempting to limit the use of alternative dispute resolution.

II. HIGHLIGHTS

A. Alaska Senate Bill 35[182]

Senator Egan introduced Alaska Senate Bill 35 on January 25, 2013.[183] On the same day, the bill was sent to the Senate Committee on Labor and Commerce as well as the Senate Committee on Finance.[184] This bill would authorize employers and employees to mediate workers' compensation claims that are disputed as long as the award is nonbinding.[185] The mediation will be informal, thus it may be conducted through a telephone conference if the mediator desires to do so.[186] The mediator will be a hearing officer or another employee of the division of workers' compensation.[187] Moreover, this bill allows the addition of an alternative dispute resolution clause in a collective bargaining agreement made between the employer and its employees.[188] If such a clause is agreed on, then it must contain certain provisions, *e.g.*, parties must mutually agree to mediation.[189] If the initial mediation does not resolve the dispute, the parties must participate in arbitration.[190] This bill has not yet been signed into law.[191]

B. Connecticut Senate Bill 319[192]

Senator Crisco from the 17th District introduced Connecticut Senate Bill 319 on January 23, 2013.[193] The bill was first sent to the Joint Committee on General Law, and a public hearing was scheduled for February 21, 2013.[194] On February 28, 2013, the committee voted to draft the bill, which was completed on March 6, 2013.[195] This bill would prohibit mandatory alternative dispute resolution clauses in home improvement and new home construction contracts.[196] If a contract has such a clause, the entire contract will not be enforceable against the owner. The stated purpose of this legislation is to preserve the rights of actual and potential homeowners to bring a dispute to court.[197] This bill is currently in the Joint Committee on General Law.[198]

182. S.B. 35, 2014 Leg., Reg. Sess. (Alaska 2014).
183. *Id.*
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. S.B. 35, 2014 Leg., Reg. Sess. (Alaska 2014).
189. *Id.*
190. *Id.*
191. *Id.*
192. S.B. 319, 2013 Leg., Reg. Sess. (Conn. 2013), *available at* ftp://ftp.cga.ct.gov/2013/tob/s/2013SB-00319-R00-SB.htm.
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. S.B. 319, 2013 Leg., Reg. Sess. (Conn. 2013).

C. Louisiana Senate Bill 633[199]

In 2014, the state of Louisiana enacted Senate Bill 633.[200] Senator Dan Claitor of District 16 introduced the bill on April 1, 2014. Senate Bill 633 amends the provisions of the Louisiana statutes regarding extracurricular activities and school children.[201] The stated purpose of the bill is to require all interscholastic extracurricular athletic associations within the state, such as the Louisiana High School Athletic Association (LHSAA) to provide a third-party arbitration mechanism for disputes surrounding eligibility of student athletes.[202] Otherwise, no school receiving public funds may be eligible to join such an organization.[203] The bill passed the Senate, by a final vote of 21-17.[204] The governor signed the bill into law on June 4, 2014.[205]

This bill was met with criticism from the LHSAA because of the potential increased cost to provide for the arbitration.[206] The bill came as a result of the controversy surrounding Clement Mubungirwa, a student athlete in Baton Rouge, Louisiana. Mubungirwa was denied eligibility for his senior year of high school sports due to his age.[207] He was denied eligibility through the LHSAA, prompting the legislative response.[208]

D. Massachusetts Senate Bill 275[209]

In 2013, Senator Bruce Tarr introduced Senate Bill 275 in Massachusetts.[210] The bill was filed on January 18, 2013 in the Senate.[211] Like many bills that have been introduced in the past few years, this bill was designed to introduce alternative dispute resolution to education. The stated purpose of the bill was to teach students alternative mechanisms for dispute resolution in productive and effective ways, in an effort to reduce violence.[212] Section 71 of the General Laws of Massachusetts governs public schools and public education.[213] Senate Bill 275 would amend Section 71 to require the Board of Elementary and Secondary Education to

199. S.B. 633, 2014 Leg., Reg. Sess. (La. 2014).
200. *Id.*
201. *Id.*; *see also* Open States Bill Tracker, *available at* http://openstates.org/la/bills/2014/SB633/#actions.
202. S.B. 633, 2014 Reg. Sess. (La. 2014) (the text of this statute now reads, "[n]otwithstanding any policy, rule, or regulation adopted by the governing authority of any public elementary or secondary school to the contrary, no student otherwise eligible to participate in an extracurricular activity, including interscholastic athletics, shall be limited in the number of such activities in which the student may participate during a school year.").
203. *Id.*
204. *Id.*
205. *Id.*
206. Cole Avery, *LHSAA Arbitration Bill Heads to House Floor on Thursday*, THE MONROE NEWS STAR (May 21, 2014), *available at* http://www.theadvertiser.com/story/sports/high-school/2014/05/21/lhsaa-arbitration-bill-heads- - to-house floor-thursday/9382655/ (last visited Aug. 28, 2014).
207. *Id.*
208. *Id.*
209. S.B. 275, 2013 Leg., Reg. Sess. (Mass. 2013).
210. *Id.*
211. *Id.*
212. *Id.*
213. *See generally* Mass. Gen. Laws Ann. Ch. 71.

include alternative dispute resolution in the curriculum for students of all ages and grade levels.[214] The bill was referred to the Joint Committee on Education on January 1, 2013.[215] Following the hearing on the bill, a study order was entered on March 13, 2014.[216] This order was reported favorably by the Committee on Education and was discharged to the Committee on House Rules on July 22, 2014.[217]

E. Nevada Senate Bill 405[218]

In 2013, the Nevada legislature introduced Senate Bill 405, by Senators Smith, Denis, Roberson, Woodhouse, Spearman, Atkinson, Kirkpatrick, and Sprinkle.[219] Among other stated purposes, the bill was created to amend Nevada Revised statutes 3.475 and 3.500.[220] Amended statute 3.475 would require district courts in counties with populations of 700,000 or more to establish a mandatory mediation program in cases involving child custody and visitation.[221] Similarly, amended statute 3.500 places the same requirement on district courts in counties with populations of 100,000-700,000.[222] Together the bills would amend the statutes to require any district court in a county with a population of over 100,000 to establish the mandatory mediation program.[223] The bill would help alleviate overcrowding in the courts and give family cases the additional focus they need. The bill passed in the Senate on May 23, 2013, and was approved by the governor on June 1, 2013.[224]

F. New York Senate Bill 1230[225]

Senator Perkins sponsored New York Senate Bill 1230.[226] The bill states that its purpose is to "amend the domestic relations law, in relation to the establishment and use of a parent-mediation program for child custody disputes."[227] The bill also provides a section governing how mediators are to be trained for the program.[228] The bill would "allow parents who are involved in a custody dispute to resolve their conflicts in a neutral setting, taking into consideration the best inter-

214. *See* S.B. 275, 2013 Leg., Reg. Sess. (Mass. 2013), *available at* https://malegislature.gov/Bills/188/Senate/S275 ("Chapter 71 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after the word 'law' in line 115, the following sentence:- 'The board shall also establish standards for the inclusion in curriculum at all grade levels, frameworks designed to teach students methods of resolving interpersonal disputes in productive and effective ways and which shall discourage the use of violence and/or other forms of abuse in the resolution of such disputes.'").
215. *Id.*
216. *Id.*
217. *See* Order H.B. 4290, *available at* https://malegislature.gov/Bills/188/House/H4290/History.
218. S.B. 405, 77th Leg., Reg. Sess. (Nev. 2013).
219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. S.B. 405, 77th Leg., Reg. Sess. (Nev. 2013).
225. S.B. 1230, 236th Leg., Reg. Sess. (N.Y. 2013).
226. *Id.*
227. *Id.*
228. *Id.*

ests of the child (or children) involved in the dispute."[229] The program provides orientation for the mediation process, allowing the parties to fully participate.[230] The parties are afforded an opportunity "to develop a comprehensive parenting plan without unduly compromising each party's right to due process and a timely resolution of the issues."[231] Introduction of the bill aimed to address the growing concern over judicial resources that are appropriated to the growing number of custody cases.[232] The bill attempts to address this allocation by forcing courts to balance the best interests of the child with the need for haste.[233] The bill was referred to the Senate Judiciary in January 2013 but as of January 2014 failed to advance, and was then again referred to the Senate Judiciary.[234]

G. Rhode Island House Bill 7132[235]

This act relates to property, and in particular, buildings on leased land. It was introduced by Representatives McNamara, Guthrie, and Shekarchi on January 16, 2014,[236] and was then referred to the House Judiciary Committee.[237] This legislation concerns the landowners of leased property and the homeowners on the leased property, when the land is being transferred or converted to other uses.[238] The bill also concerns the rights of the respective parties in disputes over compensation, as well as rent increases.[239] If the landowner elects to remove or destroy the home on the leased land, then the legislation requires landowners to make written offers of compensation to homeowners and gives homeowners the right to submit to arbitration if the offer is not fair and reasonable.[240]

Rhode Island House Bill 7132 outlines the process of submitting a claim to arbitration, which follows the rules of the court annexed arbitration program.[241] These rules require that (1) the arbitrator be selected from a list of approved arbitrators,[242] (2) the parties be given seven days notice of the arbitration hearing, (3) both parties bear the expense of arbitration,[243] and (4) the decision be binding upon the parties under the Arbitration Act.[244]

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229. *Id.*
230. *Id.*
231. S.B. 1230, 236th Leg., Reg. Sess. (N.Y. 2013).
232. *Id.*
233. *Id.*
234. *Id.*
235. H.B. 7132, 2014 Leg., Reg. Sess. (R.I. 2014), http://webserver.rilin.state.ri.us/BillText/BillText14/HouseText14/H7132.pdf.
236. *Id.*
237. *Id.*
238. *Id.*
239. *Id.* (referencing R.I. Gen. Laws § 10-3-1).
240. *Id.* at 3.
241. H.B. 7132, 2014 Leg., Reg. Sess. (R.I. 2014), http://webserver.rilin.state.ri.us/BillText/BillText14/HouseText14/H7132.pdf (the Rhode Island Superior Court administers the Court-Annexed Arbitration Program which is used to speed up the disposition of "certain less complex civil cases . . ."); *see also Know Your Courts,* RHODE ISLAND SUPERIOR COURT 3, http://www.courts.ri.gov/Courts/SuperiorCourt/PDF/SuperiorKnowYourCourts.pdf (Aug. 2012) (last visited Aug. 29, 2014) (in 2009, the arbitration program resolved 26% of all civil dispositions).
242. *Id.*
243. *Id.*
244. *Id.* (referencing R.I. Gen. Laws § 10-3-1).

H. Washington Senate Bill 6175[245]

Washington Senate Bill 6175 was introduced on January 16, 2014 by Senator Braun,[246] and subsequently referred to the Senate Committee on Trade and Economic Development for a public hearing on January 21, 2014.[247] Executive action modified the bill, and the bill was then referred to the Senate Committee on Ways and Means where a public hearing was held on February 5, 2014.[248] No action has been taken on the bill since the public hearing on February 5, 2014.[249]

The bill would modify the tax appeal process[250] in an attempt to "foster the settlement or other resolution of tax disputes. . . ."[251] The bill changes the way the appeals review board is set up and how tax disputes are handled.[252] One of the key amendments to the tax appeal process would give any party to a tax dispute the ability to request a mediation conference at any time, provided the request be made more than 30 days before the scheduled hearing.[253] Several limitations would also be placed upon the board. The board would be precluded from making mediation mandatory, (2) the mediation referee would not be allowed to participate in the hearing,[254] and (3) the board would be required to create a fee schedule for mediations and update the fee schedule every two years.[255]

245. S.B. 6175, 2014 Leg., Reg. Sess. (Wash. 2014).
246. *Id.*, *available at* http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6175&year=2013#history (last visited Jul. 12, 2014).
247. *Id.*
248. *Id.*
249. *Id.*
250. S.B. 6175, 2014 Leg., Reg. Sess. (Wash. 2014) (specifically amending RCW 82.03.020, 82.03.030, 82.03.050, 82.03.090, 84.08.130 & 34.05.518).
251. *Id.*
252. *Id.*
253. *Id.* at § 10(2).
254. *Id.* at § 10(4).
255. *Id.* at § 10(5).

III. CATALOG OF STATE LEGISLATION

ALABAMA

Bills Enacted: None

Other Legislation: H.B. 137 (Authorizes the Real Estate Commission to develop alternative dispute resolution programs to address disputes between associations and lot owners).

ALASKA

Bills Enacted: None

Other Legislation: S.B. 35 (Authorizes employers and employees to mediate disputed workers' compensation claims, negotiate a collective bargaining agreement that offers mediation, mandates arbitration by a hearing officer or other classified employee of the workers' compensation division, and allows collective bargaining agreements to supersede certain provisions of the Alaska Workers' Compensation Act).

ARIZONA

Bills Enacted: H.B. 2308 (Provides for arbitration of disputes and alternative dispute resolution in probate); S.B. 1089 (Relates to arbitration bonds and discharge of such bonds).

Other Legislation: H.B. 2556 (If passed, this bill would mandate that every issue be disputed through a formal alternative dispute resolution method first, allowing for some discretion as to which method will be used to solve potential disputes; if the dispute is not solved, a party may use other methods to resolve the issue, such as the court system).

ARKANSAS

Bills Enacted: H.B. 1205 (Provides a procedure for nonbinding arbitration to resolve certain grievances raised by employment disputes).

CALIFORNIA

Bills Enacted: A.B. 1738 (Requires that a common interest development association's dispute resolution procedure include means by which an attorney for a member, association, or another person may explain their position when advance written notice is provided).

Other Legislation: S.B. 624 (Makes binding the statutory provisions that govern arbitration and conciliation of international commercial disputes regarding representation and assistance of parties in international commercial disputes); A.B. 993

(Amends Contractors' State License Law and deems a party that submits a dispute with a contractor to arbitration to have waived any right to recover attorney fees, or to challenge an arbitrator's award of attorney fees in a related civil action).

COLORADO

Bills Enacted: None

Other Legislation: S.J. Res. 17 (Recognizing October as "conflict resolution month" in Colorado); S.B. 220 (Requires common interest communities to mediate or arbitrate claims of construction defect).

CONNECTICUT

Bills Enacted: H.B. 5450 (Allows parties asserting a claim for bodily injury in a civil action arising out of a motor vehicle accident to elect to have the matter referred to an arbitrator)

Other Legislation: S.B. 63 (Proposes to add certain provisions to Conn. Gen. Stat. § 7-473c to establish timelines for the issuing of awards in cases before the State Board of Mediation and Arbitration and the State Board of Labor Relations); S.B. 319 (Prohibits mandatory alternative dispute resolution clauses in home improvement and new home construction contracts).

DELAWARE

Bills Enacted: H.B. 234 (Allows homeowners, or a homeowner association on behalf of a homeowner to file for arbitration in disputes concerning fees).

Other Legislation: None

FLORIDA

Bills Enacted: S.B. 440 (Exempts nonresidential condominiums from mandatory arbitration unless specifically provided for in declarations); S.B. 530 (Revises the Arbitration Code relating to arbitration agreements, notice requirements, consolidation of proceedings, a prohibition against certain individuals serving as neutral arbitrators, disclosure of certain interests, immunity from civil liability for an arbitrator or arbitration organization).

Other Legislation: H.B. 425 (Provides for non-applicability of alternative dispute resolution requirements for condominiums).

GEORGIA

Bills Enacted: H.B. 438 (Increases the maximum amount of additional costs relating to the collection of additional legal costs in civil actions for the purpose of

providing court-connected or court-referred alternative dispute resolution programs).

HAWAII

Bills Enacted: H.B. 1823 (Authorizes the Board of Land and Natural Resources to provide for nonbinding mediation of disputes regarding fair market value of public lands in transactions involving the purchase, lease, or repurchase of the public lands, and the fair market rental of public lands under lease when rentals are reopened; preserves the option of binding arbitration to resolve disputes when the mediation process fails to do so; provides for appraisal reports to be available for study by the public); S. Con. Res. 110 (Requests the Hawaii Labor Relations Board to conduct an investigation into the grievance arbitration process in public collective bargaining).

Other Legislation: S. Con. Res. 110 (Requests the Hawaii Labor Relations Board to conduct an investigation into the grievance arbitration process in public collective bargaining); S.B. 2476 (Requires real estate appraisers acting as arbitrators to record, or cause to be recorded, rendered arbitration awards).

IDAHO

Bills Enacted: S.B. 1165 (Amends existing law, revising a provision relating to the attorney fees in suits against or in arbitration with insurers).

ILLINOIS

Bills Enacted: S.B. 1830 (Specifies that the Illinois Labor Relations Board has no duty to promulgate regulations setting compensation levels for members on its mediation roster); H.B. 1288 (Changes a reference in the Children with Disabilities Article of the School Code making it voluntary for a school district or other public entity to agree to participate in mediation); H.B. 923 (Creates additional responsibilities for the Conciliation or Mediation Division of the Department of Labor); S.B. 1 (Amends current law, so that changes made to the State Employees, State Universities, Downstate Teacher Article, or to the General Provisions Article as applied to such articles, are not subject to interest arbitration or any award issued pursuant to interest arbitration); H.B. 4783 (Requires that prior to any action being taken, the board of managers for a condominium complex must arbitrate or mediate disputes); S.B. 1639 (Provides that when a customer and seller do not reach an agreement within ten business days, the parties may agree to binding arbitration, or the customer may bring suit in a court of competent jurisdiction).

Other Legislation: H.B. 798 (Amends the Uniform Mediation Act by making a technical change in a section concerning the short title); S.B. 3420 (Sets forth provisions regarding arbitration proceedings for security employees, peace officers, and firefighters to be conducted before an arbitrator, instead of an arbitration panel); H.B. 5485 (Provides that in the case of firefighter, fire department, or fire

district paramedic, an arbitration decision must be limited to wages, hours, and conditions of employment, which may include staffing and residency requirements); S.B. 2892 (Provisions in condominium instruments violate public policy and become unenforceable if restricting the right of a board to represent the association in legal matters which affect the common elements or more than one unit; such restrictions occur by the consent of a percentage of unit owners who demand arbitration or mediation prior to the filing of an action in a court of competent jurisdiction); H.B. 1452 (Amends the Illinois Marriage and Dissolution of Marriage Act by making changes regarding mediation); H.B. 4407 (Provides that a child shall continue to receive appropriate early intervention services during pendency of any state complaint procedure, due process hearing, or mediation); S.B. 3090 (Repeals provisions concerning dispute resolution if the parties cannot agree whether a special circumstance exists); H.B. 5630 (Contains dispute resolution protocols and utilization review or denial management standards consistent with required standards pursuant to the Medicare Advantage program); H.B. 5400 (Amends provisions of the Beer Industry Fair Dealing Act setting forth conditions under which a brewer shall pay reasonable compensation to a wholesaler to include electing expedited binding arbitration, under certain conditions); S.B. 3273 (Provides that the attorney general must make available on the website of the Office of the Attorney General a copy of each binding opinion, each advisory opinion, and any instances in which the attorney general resolves a request for review by mediation or means other than issuing a binding opinion).

INDIANA

Bills Enacted: None

Other Legislation: H.B. 1508 (Requires a court to refer a civil action to mediation when a political subdivision sues another political subdivision, unless the court finds the matter is inappropriate for mediation); H.B. 1072 (Establishes a homeowner association study committee and requires the study committee to study homeowner associations in Indiana, including mediation or arbitration of disputes involving homeowner associations and members of homeowner associations); S.B. 284 (Provides that the Indiana Education Employment Relations Board (IEERB) may appoint a financial consultant to assist a fact-finder during mediation); S.B. 176 (Provides that when a public transportation corporation in an eligible county has been approved by a local public question, labor agreements may provide for nonbinding mediation); H.B. 1377 (If a home warranty contains an arbitration clause, the warranty holder cannot be required to pay the cost of repairing or replacing a home appliance before there is an arbitration proceeding; arbitration must be held in the county in which the warranty holder resides); S.B. 594 (Each party to a mediation associated with certain custody or parenting time proceedings must share mediation costs equally).

IOWA

Bills Enacted: H.F. 211 (Directing any litigation, mediation, arbitration, or other dispute resolution proceeding that arises from or relates to in-state construction contracts to be conducted in Iowa).

Other Legislation: H.F. 87 (Requiring certain intergovernmental agreements to include a provision for mediation and arbitration); H.F. 2310 (a child twelve years of age or older, who is truant, and refuses to engage in mediation or violates a mediation agreement is considered to have committed a delinquent act); S.S.B. 1032 (A study bill for an act relating to the requirement that creditors provide notice of the availability of counseling and mediation services to homeowners facing foreclosure); H.F. 76 (removes mediation or settlement and implements informal assistance).

KANSAS

Bills Enacted: None

Other Legislation: S.B. 18 (Changes the way disputes are resolved regarding church congregations and church property by requiring courts to use a neutral principles of law analysis.); S.B. 31 (Amends K.S.A. 75-4333 to include deliberately and intentionally avoiding mediation, fact-finding, and arbitration efforts, as provided in K.S.A. 75-4332, and amendments thereto, as prima facie evidence of bad faith for disputes regarding deduction of wages in certain employee organizations); S.B. 110 (Expenditures for mediation services that are contracted with Kansas legal services shall be made only upon certification by the executive director of the human rights commission to the director of accounts; also reporting that private moneys are available to match the expenditure of state moneys on a three-to-one basis); H.B. 2664 (Provides that the director of dispute resolution shall be appointed by the judicial administrator, and also depicts the various tasks of the director).

KENTUCKY

Bills Enacted: H.B. 133 (Amends K.R.S. 190.062 to require parties to attempt mediation in disputes involving recreational vehicle franchise, before bringing a civil action); S.B. 28 (Amends K.R.S. 343.070 to require an informal hearing before a supervisor for dispute resolution).

Other Legislation: H.B. 333 (Requires parties to a dispute involving recreational vehicle franchise issues to attempt mediation before bringing a civil action and amends K.R.S. 161.614 to include mediation awards); H.B. 506 (Includes private child care agencies as part of the resolution process when they are party to an interagency dispute); H.B. 478 (Amends K.R.S. 157.350, requiring school districts to identify a process to settle nonresident student disputes); H.B. 209 (Amends K.R.S. 131.020 to create the Division of Protest Resolution within the Department

of Revenue Office of Processing and Enforcement); S.B. 56 (Establishes a mechanism for the resolution of claims involving private employers).

LOUISIANA

Bills Enacted: H.B. 1277 (Defines that only a qualified mediator, an arbitrator approved by the American Arbitration Association or the Federal Mediation and Conciliation Service, an attorney, or a retired member of the judiciary are qualified to serve as disciplinary hearing officers for the removal of a teacher); S.B. 633 (Prohibits some schools from being a member of interscholastic extracurricular athletic associations or organizations not providing for third-party arbitration of eligibility issues).

Other Legislation: S. Res. 84 (Directs the Louisiana State Law Institute to study the feasibility and constitutionality of alternative dispute resolutions as a means of resolving legacy disputes); S.B. 423 (Provides alternative dispute resolution options in suits involving oilfield, exploration, and production sites); H.B. 529 (Amends the Elevation, Re-Elevation, or Restoration Work Warranty Act to mandate dispute resolution processes, including mediation and arbitration); S.B. 551 (Requires parties to a labor dispute to make every reasonable effort to settle such disputes, either by negotiation, or with the aid of any available governmental mediation or voluntary arbitration, before resorting to injunctive relief).

MAINE

Bills Enacted: S.B. 752 (Increases the payment from $100 to $300 for a 4-hour period of mediation services rendered by members of the Panel of Mediators and removes the provision that allows mediators to be paid on a per-dispute-mediated basis); H.B. 689 (Entitles mediators in public employee collective bargaining negotiations driving in excess of 43 miles one-way to receive an amount equal to 1/2 of the mediator's hourly fee).

Other Legislation: House Paper 946 (Would have created a process of final-offer arbitration as a means to resolve a dispute between a withdrawal committee and the directors of a regional school unit board regarding agreements for withdrawal for a municipality, voted down May 1, 2013).

MARYLAND

Bills Enacted: H.B. 697 (Amends the scope of the Maryland Mediation Confidentiality Act and authorizes certain agreements to exclude some mediation communications from the application of the Maryland Mediation Confidentiality Act); S.B. 293 (Repeals certain termination provisions that apply to the regulation of mediation or arbitration of labor disputes); S.B. 952 (Requires each contract between a pharmacy benefits manager and a contracted pharmacy to include a certain process for appealing, investigating, and resolving disputes regarding maximum allowable cost pricing); S.B. 832 (Makes changes regarding child care dispute resolution so as to establish a dispute resolution workgroup in the State De-

partment of Education; also provides for the membership of the workgroup, and requires the workgroup to make recommendations to the State Superintendent of Schools).

Other Legislation: S.B. 409 (Amends the scope of the Maryland Mediation Confidentiality Act and authorizes certain agreements to exclude certain mediation communications from the application of the Maryland Mediation Confidentiality Act); H.B. 1224 (Changes the qualifications of arbitrators in collective bargaining for police officers and personnel); H.B. 1147 (Makes changes regarding the documents required before attempting a residential property foreclosure and allows for a request for waiver of mediation filing fee).

MASSACHUSETTS

Bills Enacted: None

Other Legislation: H.B. 2469 (Provides an interest arbitration alternative for firefighters); S.B. 1260 (Establishes binding arbitration for Bristol County correctional officers); H.B. 32 (Overhauls the definitions section for the Uniform Arbitration Act for commercial disputes); S.B. 1246 (Provides interest arbitration for state employed health care professionals); S.B. 1215 (Requires that if parties to a collective bargaining dispute are unable to resolve the issues within 30 days after publication of a fact finder's report, either party may petition the board to order arbitration if certain criteria are met); S.B. 1992 (Establishes the Manufactured Housing Trust Fund to support the manufactured housing dispute resolution program); H.B. 33 (Uniforms certain aspects of mediation by thoroughly defining which types of mediation apply to Chapter 251); S.B. 275 (Promotes alternative dispute resolution for students); H.B. 2253 (Provides dispute resolution procedures for issues arising during mid-term bargaining); H.B. 1608 (Provides processes for resolution of disputes involving condominium or homeowners associations); S.B. 492 (Establishes a foreclosure mediation program).

MICHIGAN

Bills Enacted: H.B. 5576 (Amends 1969 PA 312 relating to compulsory arbitration of labor disputes in municipal police and fire departments); S.B. 714 (Allows parties to agree to a collaborative alternative dispute resolution process as an alternative to litigation).

MINNESOTA

Bills Enacted: None

Other Legislation: S.B. 735 (Establishes and appropriates a dispute resolution office in the bureau of mediation services); S.B. 718 (Would have created the Rice County mediation pilot program); H.B. 1941 (Mortgage foreclosure mediation process established); H.B. 3236 (Provides and clarifies duties for the Commissioner of Mediation Services); H.B. 251 (Extends Farmer-Lender Mediation Act

sunset date); S.B. 1295 (Requires mandatory submission to binding arbitration in certain cases involving no-fault automobile insurance benefits, coverage, and health claim appeals).

MISSISSIPPI

Bills Enacted: H.B. 742 (Provides for mediation of disputes by amending Section 63–17–73 of the Mississippi Code of 1972).

Other Legislation: H.B. 792 (Creates the MS Residential Mortgage Foreclosure Mediation Program); H.B. 1103 (Arbitration clauses in certain contracts shall not be binding); H.B. 961 (Eminent domain processes to be determined by binding arbitration).

MISSOURI

Bills Enacted: S.B. 500 (Modifies provisions of law relating to qualified spousal trusts, no-contest clauses, and mediation provisions in wills and trusts, by making enforceable provisions within these instruments); S.B. 653 (Repeals provision that allows parties to seek review of any fee, term, or condition in binding arbitration, and instead allows either party to bring an action for expedited review in any court of competent jurisdiction).

Other Legislation: S.B. 654 (Provisions in a trust instrument requiring mediation or arbitration are enforceable); S.B. 241 (When utility providers cannot agree that special circumstances exist to a particular railroad crossing, the dispute shall be submitted to non-binding arbitration under the Uniform Wireless Communications Infrastructure Deployment Act); S.B. 619 (Mandates that any court, arbitration, tribunal, or administrative agency ruling shall be unenforceable if based on a foreign law that does not grant the parties the same rights as the parties have under the United States and Missouri Constitutions); S.B. 652 (Rules of arbitration may be in accordance with commercial rules of arbitration, or as otherwise agreed by the parties); S.B. 260 (Establishes a negotiation and arbitration procedure to determine the reimbursement level for out-of-network health care services).

MONTANA

Bills Enacted: H.B. 555 (Revises mediation laws relating to family law and domestic violence, and clarifies the circumstances in which a court may order mediation to resolve amended parenting plan disputes); H.B. 431 (Updates negotiation requirements for surface owner damage and disruption compensation from oil and gas developers or operators); S.B. 203 (Interstate commission allowed to provide for dispute resolution among member states).

Other Legislation: S.B. 280 (Authorizes mediation when a property taxpayer objects to the assessed valuation of property); S.B. 272 (Child custody proceedings involving Native American children may include an alternative dispute resolution

proceeding in the form of a family group decision making meeting, mediation, or settlement conference).

NEBRASKA

Bills Enacted: None

Other Legislation: L.B. 355 (Defines "mediator" for juvenile offender and victim mediation); L.B. 1093 (Provisions relating to facilitated conferencing in juvenile cases updated); L.B. 342 (Parenting plan cases shall be referred to mediation or specialized alternative dispute resolution); L.B. 307 (Allows a compensation court to adopt rules regarding dispute resolution necessary to fulfill the purposes of the workers' compensation statute).

NEVADA

Bills Enacted: S.B. 405 (Courts may require impartial mediation on issues of custody and visitation, or any other nonfinancial issue deemed appropriate).

Other Legislation: A.B. 169 (Defines "alternative dispute resolution" for provisions relating to contracts with a governmental entity); A.B. 485 (Defines "alternative dispute resolution" for provisions relating to contracts with a governmental entity).

NEW HAMPSHIRE

Bills Enacted: H.B. 1478 (Establishes a process for informal dispute resolution if the child day care agency disagrees with the department's findings).

Other Legislation: H.B. 1595 (Condominium dispute resolution board established); H.B. 571 (Judicial branch family court task force to consist of 21 members, including a mediator-attorney with the New Hampshire Conflict Resolution Association); H.B. 591 (Procedure established for employees to request and receive trained conflict resolution assistance within the workplace whether a formal complaint of abusive conduct is filed or not).

NEW JERSEY

Bills Enacted: None

Other Legislation: S.B. 378 (Provides that if a power of attorney contains language or confers authority on an agent to conduct banking transactions, the agent has the power to submit to alternative dispute resolution, mediation, or arbitration); S.B. 857 (Requires state agencies to implement alternative dispute resolution policies and expands duties of Dispute Settlement Office of Department of Public Advocate); A.B. 1103 (Provides an ombudsman to provide information to parents and school districts about mediation and alternative dispute resolution options for resolving disputes).

NEW MEXICO

Bills Enacted: None

Other Legislation: S.B. 66 (Requires that an appointed alternative dispute resolution director have at least eighty hours of training in alternative dispute resolution, mediation, dialogue or restorative justice and at least two years of experience in applying these skills in a community setting or equivalent life experience); S.B. 6 (Board must establish procedures for alternative dispute resolution between the exchange and contractors or carriers); H.B. 365 (Alternative dispute resolution process for commercial real estate transactions created).

NEW YORK

Bills Enacted: S.B. 2605 (A provider initiating arbitration, including a single arbitration process pursuant to this section shall pay a fee to be used to cover the costs related to the conduct of such arbitration).

Other Legislation: A.B. 8557 (Superintendent of Financial Services shall promulgate regulations establishing standards for a dispute resolution process, including a process for certifying and selecting independent dispute resolution entities); S.B. 1230 (Creates the parent-mediation program for child custody disputes).

NORTH CAROLINA

Bills Enacted: None

Other Legislation: H.B. 482 (Amending laws regarding mediated settlement conferences in superior court, mediation in district court domestic cases, and the regulation of mediators, to establish a dispute resolution fund for monies collected through the existing administrative fee for the certification of mediators and mediation training programs, and also making it unlawful to make a false representation as a certified mediator or falsely represent a mediator training program as certified); H.B. 1092 (Creating a mechanism for enforcing payment of the criminal mediation fee); H.B. 960 (Provides conflict resolution and mediation models).

NORTH DAKOTA

Bills Enacted: None

Other Legislation: H.B. 280 (Relates to mediation of mineral developer and surface owner disputes and resolution of title disputes); H.B. 146 (Authorizing a commission to provide for dispute resolution among member states in the interstate commission on educational opportunity for military children).

OHIO

Bills Enacted: H.B. 309 (Court of common pleas allowed to determine extra funds required for mediation services).

Other Legislation: H.B. 159 (Health insuring corporations must disclose availability of dispute resolution procedures at provider's request); H.B. 371 (Registry of condominium developments and the Ohio Condominium Dispute Resolution Commission established).

OKLAHOMA

Bills Enacted: None

Other Legislation: 2014 OK REG TEXT 356747 (Establishes procedures and standards governing alternative dispute resolution, including mediation, as an informal process for workers' compensation claims and issues, authorized in 85A O.S. § 70 regarding preliminary conferences, 85A O.S. § 109 regarding Commission counselor program, and 85A O.S. § 110 regarding alternative dispute resolution and mediation); 2014 OK REG TEXT 349328 (Provides procedures for resolution of disputes between state agencies and suppliers); 2013 OK REG TEXT 333141 (Requires parties to check willingness of opposing party to participate in mediation or other form of alternative dispute resolution prior to final pre-hearing conference).

OREGON

Bills Enacted: None

Other Legislation: S.B. 555 (Tenant and Landlord Dispute Resolution Fund established); S.B. 747 (Certain cities may not enter collective bargaining agreement that provides for binding arbitration of issues related to disciplining or termination of city police officers for misconduct involving unlawful use of force); H.B. 2448 (Issues subject to collective bargaining not resolved through negotiation or mediation must be resolved through binding arbitration).

PENNSYLVANIA

Bills Enacted: None

Other Legislation: H.B. 1964 (Requires an independent mediator be appointed within 15 days of notice in contract disputes between insurers and health systems); H.B. 1845 (Relates to Policemen and Firemen Collective Bargaining Act, providing the right to collectively bargain, for board of arbitration and for determination of board of arbitration); H.B. 2339 (Provisions concerning effect of an assisted city's financial plan on arbitration awards repealed).

RHODE ISLAND

Bills Enacted: H.B. 7346 (Disabilities ombudsperson program to be administratively attached to department of administration); H.B. 7633 (Arbitration mandated in event of locally administered firefighter, police, teacher or municipal employee pension plan in critical status, prevents municipality from entering into a labor contract greater than five years); S.B. 2246 (Relates to school teacher arbitration and locally administered pension plans, preventing locally administered plans from entering into labor contracts greater than 5 years); H.B. 7026 (Amends notification requirements regarding dismissal, suspension or layoff of teachers, but does not prohibit arbitration); H.B. 8293 (Requiring mediation conference for foreclosures stemming from unemployment or underemployment).

Other Legislation: H.B. 7132 (Detailing process of binding arbitration for a landowner and homeowner); H.B. 7467 (Rights of arbitration for retired police officers and firefighters created); S.B. 2531 (Bill would regulate business relationship between providers of pharmacy services and group health insurers, and gives pharmacy providers the right to request mediation to resolve any disagreements between the two parties); S.B. 2759 (Keeps Collective Bargaining Agreement in effect in agreement of arbitration when an award is rendered); S.B. 2876 (Designates an ombudsperson to advocate on behalf of beneficiaries of Medicare or Medicaid); S.B. 3072 (Mediation conference for foreclosures due to unemployment or underemployment is required).

SOUTH CAROLINA

Bills Enacted: None

Other Legislation: S.B. 4366 (Employment discrimination violations by state human affairs commission must be accompanied by preliminary mediation conference); H.B. 4579 (Authorizes and directs mediation of boundary disputes); H.B. 5023 (Exempts insurance policies from specific application of SC Uniform Arbitration Act); S.B. 819 (Adds Chapter 52 Homeowner Association, providing for the times that a member of a homeowner association may submit to mediation in a dispute with the homeowner association).

SOUTH DAKOTA

Bills Enacted: S.B. 74 (Prior to a ruling on a joint physical custody petition, either parent may request mediation).

TENNESSEE

Bills Enacted: S.B. 2088 (Expands scope of ombudsman services for unrepresented claimants).

UTAH

Bills Enacted: H.B. 25 (Amends provisions relating to an arbitration or mediation facilitated by the Office of the Property Rights Ombudsman); H.B. 287 (Creates a provision for using arbitration in personal injury from dog attack).

Other Legislation: H.B. 49 (Requires parties to mediate issues arising from a water rights change application); H.B. 56 (Provides for parties to a claim for an excessive notice of preconstruction lien or an excessive construction lien to be submitted to binding arbitration).

VERMONT

Bills Enacted: S.B. 241 (Creates Grievance Arbitration Study); S.B. 316 (Describes when a mediator is necessary and the authority of the mediator in collective bargaining concerning early child care and education providers).

Other Legislation: S.B. 114 (Clarifies the statutory duties of the Office of the Mental Health Care Ombudsman); H.B. 705 (Repealing the mental health care ombudsman statute); H.B. 770 (Provides arbitration guidelines for disputes that could otherwise be adjudicated in wrongful discharge of employee suits).

VIRGINIA

Bills Enacted: H.B. 141 (In custody, visitation, or support disputes, the parties must attend the educational seminar before participating in mediation or other alternative dispute resolution programs); H.B. 240 (Entities operating programs of State Long-Term Care Ombudsman must have access to adult day care centers).

Other Legislation: H.B. 332 (Requires Common Interest Community Ombudsman to develop and disseminate to all common interest communities in Virginia).

WASHINGTON

Bills Enacted: H.B. 1709 (Ombudsman to submit to Education Committee a feasibility study of State foreign language interpretations); H.B. 2723 (Pre-foreclosure meeting and mediation in county of property required).

Other Legislation: H.B. 1353 (In any proceeding involving matters governed by a parenting plan, the matter must be scheduled for mediation of the contested issues); H.B. 1434 (Requires potentially impacted communities to participate in mediated community dialogue); S.B. 5694 (Administrator for the courts and long-term care ombudsman required to publish information regarding guardians); S.B. 6118 (Enforcement authorities, including mediators, shall not enforce foreign laws if it would violate a constitutional right); S.B. 6175 (Intended to foster the settlement or resolution of tax disputes through a revision of the tax appeals process, including mediation conferences); S.B. 6363 (Creates Office of Behavioral Health Ombudsman); S.B. 6399 (Creates Office of Corrections Ombudsman); S.B. 6506

(Promoting collective bargaining and binding interest arbitration to enhance safety); S.B. 6507 (Creates the requirement that homeowners must participate in mediation with housing counselor in order to avoid foreclosure); S.B. 6118 (Prevents courts or other enforcement authorities—mediators, arbitrators, etc., from enforcing foreign law).

WEST VIRGINIA

Bills Enacted: None

Other Legislation: H.B. 2132 (Relating to charity racing events and on-site mediation of disputes); H.B. 2904 (Relating to charity racing events and on-site mediation of disputes); H.B. 4514 (Creates the Office of Child Protection Ombudsman); H.B. 4558 (Provides for conflict resolution in drilling oil and gas wells); S.B. 251 (Revises the article relating to arbitration, and implements terms of the Uniform Arbitration Act).

WISCONSIN

Bills Enacted: None

Other Legislation: A.B. 553 (Relates to arbitration agreements used by long-term care facilities).

WYOMING

Bills Enacted: None

Other Legislation: H.B. 142 (Provides for nonbinding arbitration in collective bargaining agreements with firefighters and local governments).