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## State Legislative Update

M. Katherine Kerbs

Katherine E. McMurtrey

Courtney Lauer

Theresa Mullineaux

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# STATE LEGISLATIVE UPDATE\*

*M. KATHERINE KERBS  
KATHERINE E. MCMURTEY  
COURTNEY LAUER  
THERESA MULLINEAUX*

## I. STATE LEGISLATIVE FOCUS

### *A. Mediation and Confidentiality*

Bill Numbers: 2016 Arizona Senate Bill 1293  
2015 California Senate Bill 1372  
Summary: Mediation and Confidential Communications  
Status: Governor signed on May 18, 2016; From Senate Committee  
Without Further Action.

#### *1. Introduction*

Mediation is a non-binding type of dispute resolution.<sup>1</sup> Mediation is a process where a neutral, third party with no authoritative decision-making power assists parties in a dispute to voluntarily reach a mutually acceptable agreement.<sup>2</sup> The legal community has encouraged alternative dispute resolution, including mediation. With mediation as the primary alternative dispute resolution type in the federal district courts, it is now even more important that legislation surrounding mediation and confidentiality is created.<sup>3</sup> In fact, over half of the ninety-four federal court districts now offer, and in most instances, require mediation.<sup>4</sup>

#### *2. Legislative Response to Mediation and Confidentiality*

Thus, it seems that mediation and confidentiality has been a trend within this past year in legislation. In Arizona, a bill was passed to ensure the confidentiality of the mediation process.<sup>5</sup> This legislation ensures that communications made, materials created for or used and acts occurring during a mediation are confidential.<sup>6</sup>

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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 e-mail the Journal of Dispute Resolution Editorial Board at [JDR@missouri.edu](mailto:JDR@missouri.edu).

1. JAMES ALFINI ET AL., *MEDIATION THEORY AND PRACTICE* 1 (2d ed. 2006).

2. *Id.*

3. ELIZABETH PLAPINGER & DONNA STIENSTRA, *ADR AND SETTLEMENT IN THE FEDERAL DISTRICT COURTS* 4 (2006), available at [www2.fjc.gov/sites/default/files/2012/adrsrckbk.pdf](http://www2.fjc.gov/sites/default/files/2012/adrsrckbk.pdf).

4. *Id.*

5. S. 1293, 52d Leg., 2d Reg. Sess. (Ariz. 2016).

6. ARIZ. REV. STAT. ANN. § 12-2238(B) (2016).

There are exceptions to this legislation though, meaning otherwise relevant and admissible evidence is not excluded from a subsequent trial.<sup>7</sup> Passed on May 18, 2016,<sup>8</sup> Arizona Bill 1293 provides a confidential mediation process unless one of the five below exceptions is provided:

1. All of the parties to the mediation agree to the disclosure.
2. The communication, material or act is relevant to a claim or defense made by a party to the mediation against the mediator or the mediation program arising out of a breach of a legal obligation owed by the mediator to the party.
3. The disclosure is required by statute.
4. The disclosure is necessary to enforce an agreement to mediate.
5. The disclosure is made in a report to a law enforcement officer, the department of child safety or adult protective services by a court appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, physical injury or a reportable offense.<sup>9</sup>

The bill further provides that a mediator can only be subpoenaed in limited circumstances – which are exceptions 2-4 listed above.<sup>10</sup> The mediator is further protected because the mediator is only subject to civil liability when the mediator acts with “intentional misconduct or reckless disregard of a substantial risk of a significant injury to the rights of others.”<sup>11</sup> The bill also provides that, if needed, to enforce or obtain approval of a mediation agreement, the agreement terms signed by the parties are not confidential.<sup>12</sup>

California Senate Bill 1372 is a similar bill introduced in California regarding mediation and confidentiality.<sup>13</sup> For purposes of confidentiality, the bill would have provided that a mediation ends if there is no communication between the mediator and any of the parties to the mediation regarding the dispute for 14 calendar days.<sup>14</sup> The law in California is now:

“when a person consults a mediator or mediation service for the purpose of retaining mediation services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence or subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified. For purposes of confidentiality,

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7. *Id.*

8. S. 1293.

9. § 12-2238(B).

10. *Id.* at § 12-2238(C).

11. *Id.* at § 12-2238(F).

12. *Id.* at § 12-2238(D).

13. S. 1372, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

14. S. 1372, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

existing law provides that a mediation ends when one of several specified conditions is satisfied, including if there is no communication between the mediator and any of the parties to the mediation relating to the dispute for 10 calendar days.”<sup>15</sup>

### 3. *American Bar Association Response to Mediation and Confidentiality*

Much like Arizona and California, the American Bar Association has recognized confidentiality standards within a mediation needed to be created.<sup>16</sup> Thus, the American Bar Association created model standards in which states can develop a framework for the practices of mediation.<sup>17</sup> These standards can be impacted by applicable law, court rules, regulations, etc. but the standards help to determine what is seen to be best for all parties.<sup>18</sup> It is important to note though that these standards, unless adopted by a court or other regulatory authority, do not have legal authority.<sup>19</sup> The standards note that a “mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.”<sup>20</sup>

Confidentiality has been touted as vital to mediation for a variety of reasons. First, effective mediation requires candor.<sup>21</sup> Parties need to be able to discuss issues, determine if and what are potential bases for agreement, and define the underlying causes of conflict.<sup>22</sup> In order for the mediator to be effective, the mediator must be able to draw out baseline positions and interests.<sup>23</sup> This would be difficult, if not impossible to do, if this information were discoverable in a court of law.<sup>24</sup> Since mediation is often a voluntary process, it seems counterintuitive to have the mediation process potentially hurt the parties as opposed to helping. This is especially true as mediation is inherently seen as private since it is an out of court proceeding.

Furthermore, parties might be unaware that what is said in a mediation could be used against them in some states. This could hurt the perception and helpfulness of mediation as some sophisticated parties could use mediation as a discovery device against less sophisticated parties.<sup>25</sup>

In order to maintain the integrity of the dispute resolution process, the neutral must maintain confidentiality.<sup>26</sup> In order to gain the trust of the parties, and attempt to come to an amicable solution for both sides, a mediator must be able to assure the parties that the mediator will not be compelled to testify against either party if

15. *Id.*

16. See *Model Standards of Conduct for Mediators*, AM. BAR ASS’N (Sep. 2005), [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.pdf).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at § V(A).

21. Lawrence R. Freedman & Michael L. Prigoff, *Confidentiality in Mediation: The Need for Protection*, 2 OHIO ST. J. ON DISP. RESOL. 37, 38 (1986).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Linda I. Hay, Carol M. Carnevale, & Anthony V. Sinicropi, *Professionalization: Selected Ethical Issues in Dispute Resolution*, 9 JUST. SYS. J. 228, 230 (1984).

the mediation does not settle the dispute.<sup>27</sup> A lack of confidentiality could also hurt the mediator. Mediators are seen by the parties, and should be, neutral and unbiased. If a mediator is forced to testify at a proceeding between the two mediating parties, it would inevitably be perceived as favoring one side or the other hurting the mediator's efficacy.<sup>28</sup> This could harm a mediator's reputation and cause less mediations and harassment.<sup>29</sup> Future parties would be less likely to mediate when there is fear that anything said in the mediation could be used against them in a later court proceeding.<sup>30</sup>

#### 4. *Federal Rules' Response to Mediation and Confidentiality*

Federal Rules of Civil Procedure have not clarified what is and is not required to be disclosed in discovery.<sup>31</sup> In Rule 26, a mediation is not listed as a proceeding exempted from initial disclosure.<sup>32</sup> As such, it is uncertain whether mediation proceedings can or will be kept out of attorneys' files in preparation for subsequent litigation.<sup>33</sup> While Rule 26 calls for disclosure, only under limited exceptions can the information be withheld.<sup>34</sup> The scope of discovery is that of

"any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."<sup>35</sup>

It is important to note that what is discoverable is not synonymous with what is admissible as evidence.<sup>36</sup>

Another way Federal Rule of Civil Procedure 26 may protect mediation discussions is through the protective order. The rule allows the court with good cause to "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" through forbidding disclosure of evidence or discovery.<sup>37</sup> While some potential loopholes exist within the Federal Rules of Civil Procedure, there is no bright line exception for mediations and confidentiality.

The Federal Rules of Evidence also help shed some light on the mediation and confidentiality issues facing the American judicial system. Federal Rule of Evidence 408 regarding compromise offers and negotiations helps to mend some of the admissibility issues should a dispute lead to a courtroom.<sup>38</sup> By excluding from evidence certain communications made during settlement negotiations, it reflects a

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27. Pamela A. Kentra, *Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*, 1997 BYU L. REV. 715, 722-723.

28. Freedman & Prigoff, *supra* note 21, at 38.

29. *Id.*

30. *Id.* at 44.

31. *See* FED. R. CIV. P. 26.

32. *Id.*

33. *See id.*

34. *Id.*

35. FED. R. CIV. P. 26(b)(1).

36. *See* FED. R. CIV. P. 26.

37. *Id.* at 26(c).

38. FED. R. EVID. 408.

strong policy of encouraging the settlement of court cases.<sup>39</sup> The rule prohibits using evidence to “prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction.”<sup>40</sup> Examples of impermissible evidence include “furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim” and “conduct of a statement made during compromise negotiations about the claim—except when offered in a criminal case and when the negotiations related to a claim by a public office the exercise of its regulatory, investigative, or enforcement authority.”<sup>41</sup>

However, not every state has codified the Federal Rules of Evidence. Additionally, the rule itself does not cover every facet of a mediation. Mediations often include discussions of a wide range of issues—not just the validity or amount of a claim.<sup>42</sup> Thus, this rule does not provide protection when the validity or amount of a civil claim is not in dispute.<sup>43</sup> Additionally, there are exceptions to this rule including the court admitting the evidence for another purpose like “proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.”<sup>44</sup> The “another purpose” language used in the rule could leave much of the mediation subject to disclosure.<sup>45</sup> Examples of when Rule 408 would not apply for a mediation include mediations involving family, neighborhood, or minor criminal issues.<sup>46</sup> It is also inapplicable in administrative or legislative hearings.<sup>47</sup> Furthermore, Rule 408 does not provide protection against public disclosure of information discussed in mediation.<sup>48</sup> A caveat to note about the rule is that it *only* affects parties to subsequent litigation: parties in a mediation that are not parties to the litigation cannot raise objections to the introduction of otherwise confidential communications under Rule 408.<sup>49</sup> States that have codified this rule are allowing more effective mediations to occur but this rule has limited applicability.

Furthermore, Federal Rule of Evidence 501 allows a mediation confidentiality privilege to be created, *if* the state has passed a law as such in the civil context.<sup>50</sup> The rule states, “in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.”<sup>51</sup> This is why it is so important for states to create a mediation confidentiality privilege as it would clearly establish a privilege in all state contexts and limited federal contexts.

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39. FED. R. EVID. 408 advisory committee’s note on proposed rules.

40. FED. R. EVID. 408(a).

41. *Id.*

42. Kentra, *supra* note 27, at 730.

43. FED. R. EVID. 408.

44. *Id.*

45. Kentra, *supra* note 27, at 730; *see also* Alan Kirtley, *The Mediation Privilege’s Transition from Theory to Implementation: Designing a Mediation Privilege Standard to Protect Mediation Participants, the Process and the Public Interest*, 1995 J. DISP. RESOL. 1, 13 (“The ‘another purpose’ clause in the hands of creative counsel leaves little in mediation definitely exempt from disclosure.”).

46. FED. R. EVID. 408.

47. *Id.*

48. *Id.*

49. *Id.*

50. FED. R. EVID. 501.

51. *Id.*

5. *Opposition to Mediation and Confidentiality*

Some argue against legislation or codified rules on mediation confidentiality finding that blanket mediation privileges are unnecessary, unjustified, and counter-productive.<sup>52</sup> Other arguments include the difficulty in creating a blanket provision covering all forms of alternative dispute resolution and that the rights of third parties could be harmed unless the confidentiality privilege is carefully crafted.<sup>53</sup> Additionally, some critics say that excluding evidence would cause unfairness.<sup>54</sup> It is important to note though that it would also be unfair to use confidential information against a mediation participant.<sup>55</sup>

6. *Conclusion*

While this may seem bleak for mediators, and the parties within mediation, not all hope is lost. States like Arizona and California are making positive strides to ensure the confidentiality of mediations and combating the difficultness of creating these provisions. Until all states pass legislation like this, there are some steps that mediators and the parties participating can take. First, mediators should explain before the mediation begins the extent to which the process is confidential. This is especially important when there seems to be a difference in the sophistication of the parties.

Additionally, the mediator can invite parties to set the terms regarding confidentiality. Some parties attempt to do this through private, pre-mediation contracts which provide for the confidentiality of all communications during the mediation.<sup>56</sup> While a court is not bound to uphold an agreement by the parties, it is persuasive as to the parties' intent.<sup>57</sup> Further dangers include a party breaching the contract which would cause additional litigation and a third-party not bound to the contract exposing information.<sup>58</sup> The mediator should be sure to point out that if the parties come to an agreement regarding confidentiality, it only binds the parties. As such, the agreement will not protect the parties from a non-party to the agreement from seeking or disclosing information about the mediation.<sup>59</sup> A mediator could also dictate confidentiality expectations if the parties so desire.

However, "no pledge of privacy . . . can avail against demand for the truth in a court of justice."<sup>60</sup> Because the Federal Rules of Civil Procedure and Federal Rules of Evidence have not established confidentiality within mediations, it is vital that states pass legislation to ensure confidentiality. By doing so, the states will ensure more effective mediations for both the parties and the mediators.

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52. Freedman & Prigoff, *supra* note 21, at 39.

53. *Id.* at 39-40.

54. *Id.* at 43.

55. *Id.*

56. Kentra, *supra* note 27, at 731.

57. Freedman & Prigoff, *supra* note 21, at 41.

58. Kentra, *supra* note 27, at 731.

59. Freedman & Prigoff, *supra* note 27, at 41.

60. JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2286, at 528 (John T. McNaughton ed., Little, Brown & Co. 1961).

*B. Interstate Medical Licensure Compact:*

Bill Numbers:	Missouri House Bill 2811 Missouri House Bill 1718
Summary:	Alternative Dispute Resolution mandated for disputes between member states or member boards
Status:	Referred to Health and Mental Health Policy Committee. Hearing was not scheduled; Placed on Senate Informal Calendar on 5/10/16 after being passed out of House and Senate committee.

Nationwide, bills known as the “Interstate Medical Licensure Compact” are being introduced, and so far, 17 bills have been enacted.<sup>61</sup> The model bill’s language mandates both mediation and binding dispute resolution rules to be promulgated for disputes between member states or member boards.<sup>62</sup> Even though the main purpose of these bills is not to change the trend of a form of alternative dispute resolution, it is important to note that alternative dispute resolution is now mandated.<sup>63</sup>

*1. Introduction to the Interstate Medical Licensure Compact*

The purpose of the Interstate Medical Licensure Compact (IMLC) is to create easier paths for “qualified physicians,” who desire to practice in multiple states, to licensure.<sup>64</sup> The desired outcome from the enactment of IMLC bills is to “increase access to health care for patients in underserved or rural areas” and “allow[] [patients] to more easily connect with medical experts through the use of telemedicine technologies.”<sup>65</sup>

By achieving these goals, the bills’ proponents states that “the Compact strengthens public protection by enhancing the ability of states to share investigative and disciplinary information.”<sup>66</sup> Currently the following states have enacted a form of the IMLC: Alabama, Arizona, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Mississippi, Montana, Nevada, New Hampshire, South Dakota, Utah,

61. *About the Compact*, INTERSTATE MED. LICENSURE COMPACT, <http://www.licenseportability.org> (last visited Nov. 2, 2016).

62. *Model Legislation*, INTERSTATE MED. LICENSURE COMPACT, <http://www.licenseportability.org/wp-content/uploads/2016/01/Interstate-Medical-Licensure-Compact-FINAL.pdf> (last visited Nov. 2, 2016).

63. *Id.*

64. *About the Compact*, *supra* note 1.

65. *Id.* “Telemedicine . . . allows health care professionals to evaluate, diagnose and treat patients in remote locations using telecommunications technology.” *Telemedicine Definition*, AMD TELEMEDICINE, <http://www.amdtelemedicine.com/telemedicine-resources/telemedicine-defined.html> (last visited Dec. 3, 2016). Per a recent article in the Columbia Daily Tribune, “[t]elemedicine is becoming a popular alternative to in-person doctor visits.” Jodie Jackson, Jr., *Virtual Health: Telemedicine becoming popular alternative to in-person doctor’s visits*, COLUMBIA DAILY TRIBUNE (Nov. 26, 2016), [http://www.columbiatribune.com/business/saturday\\_business/virtual-health-telemedicine-becoming-popular-alternative-to-in-person-doctor/article\\_8ec2b1ac-1c7f-5646-8489-4f1cf53e68e9.html](http://www.columbiatribune.com/business/saturday_business/virtual-health-telemedicine-becoming-popular-alternative-to-in-person-doctor/article_8ec2b1ac-1c7f-5646-8489-4f1cf53e68e9.html).

66. *About the Compact*, *supra* note 1.

West Virginia, Wisconsin, and Wyoming.<sup>67</sup> Michigan and Pennsylvania both currently have an active IMLC bill.<sup>68</sup> In the states where the IMLC is enacted, expedited licensing is not yet available, but the administrative processes are currently being established.<sup>69</sup> Currently, the IMLC is in the process of establishing an administrative process for the expedited licensing.<sup>70</sup>

## 2. *The Need for an Interstate Compact*

The need for an interstate compact stems from the anticipated influx of patients in the new health care system under the Affordable Care Act.<sup>71</sup> An influx of millions of new patients presents the risk of lack of obtainable health care in underserved or rural areas.<sup>72</sup> There is also a need for more use of telemedicine.<sup>73</sup> “Proponents of telemedicine . . . often cite[] the time-consuming state-by-state licensure process for multiple-license holders as a key barrier to overcome in order for telemedicine to continue to grow and thrive.”<sup>74</sup> The proponents also believe IMLC would make a more streamlined process for physicians while obtaining their license to practice in other states.<sup>75</sup> The result of this would be expanded availability of medical care when demand starts to rise.<sup>76</sup>

## 3. *Effect on Current Physicians*

It is estimated that almost 80 percent of the current physician pool in the United States could be eligible for expedited licensure through an IMLC bill.<sup>77</sup> Eligible physicians must:

- “Possess a full and unrestricted license to practice medicine in a Compact state,”
- “Possess specialty certification or be in possession of a time unlimited specialty certificate,”
- “Have no discipline on any state medical license,”
- “Have no discipline related to controlled substances,”
- “Not be under investigation by any licensing or law enforcement agency,”
- “Have passed the USMLE<sup>78</sup> or COMLEX<sup>79</sup> (or equivalent) within 3 attempts,” and

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67. *Id.*

68. *Id.*

69. *Id.*

70. *About the Compact*, *supra* note 1.

71. *Frequently Asked Questions*, INTERSTATE MED. LICENSURE COMPACT, <http://www.licenseportability.org/faq/> (last visited Nov. 2, 2016).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Frequently Asked Questions*, *supra* note 11.

78. The USMLE is the United States Medical Licensing Examination.

79. The COMLEX is the Comprehensive Osteopathic Medical Licensing Examination.

- “Have successfully completed a graduate medical education (GME) program.”<sup>80</sup>

However, the physicians that do not qualify for the expedited process from IMLC can still use the traditional state-by-state licensure processes to obtain additional licenses in other states.<sup>81</sup>

The IMLC does not replace individual licenses in individual states.<sup>82</sup> Physicians must still obtain medical licenses to practice medicine from each state’s medical board.<sup>83</sup> Furthermore, the physician must be licensed in the state where their patients are located.<sup>84</sup>

Under the IMLC, “[t]he physician must possess a full and unrestricted license to practice medicine in the state of principal licensure.”<sup>85</sup> Additionally, the state must be (a) the state of “primary residence” for the physician, (b) the state where 25 percent of the physician’s practice takes place, (c) where the physician’s employer is located, or (d) if no other state qualifies, the state designated as the residence for federal income tax purposes.<sup>86</sup>

#### 4. IMLC Process

For a state to become a member of the IMLC, the state legislature must enact the Compact into state law.<sup>87</sup> As mentioned earlier, 17 states have enacted the IMLC with an additional two states that had pending legislation.<sup>88</sup> If a state does enact the IMLC, the state retains their “[c]onstitutionally-mandated role” regulating its state’s practice of medicine.<sup>89</sup> Additionally, the Compact does not change a state’s existing Medical Practice Act.<sup>90</sup> This means that any physician using the IMLC process as opposed to the traditional licensure process would have the same full and unrestricted license as other physicians in the state.<sup>91</sup>

Presently, the IMLC has a proposed draft legislation.<sup>92</sup> Specifically in this draft legislation, Section 19 is titled “DISPUTE RESOLUTION.”<sup>93</sup> The language is as follows: “(a) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Compact and which may arise among member states or member boards. (b) The Interstate Commission shall promulgate rules providing for both mediation and binding dispute resolution as

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80. *Frequently Asked Questions*, *supra* note 11.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Frequently Asked Questions*, *supra* note 11.

87. *Id.*

88. *About the Compact*, *supra* note 1.

89. *Frequently Asked Questions*, *supra* note 11.

90. *Id.*

91. *Id.*

92. *Model Legislation*, *supra* note 2.

93. *Id.*

appropriate.”<sup>94</sup> The Interstate Commission<sup>95</sup> must make mediation/binding dispute resolution rules for the IMLC in the event of a dispute.”<sup>96</sup>

### 5. *Effect on Alternative Dispute Resolution*

While the IMLC does not have an overbearing effect on the way alternative dispute resolution is conducted, it does show a large subsection of physicians that can now be affected by a form of dispute resolution. In September 2016, the total number of physicians active in the United States was 926,110.<sup>97</sup> Therefore, the estimated number of physicians eligible for the IMLC effects are 740,888.<sup>98</sup> Many physicians, due to this enacted legislation, could be affected by binding dispute resolution.

### 6. *Proponents & Criticism*

In April 2013, the Federation of State Medical Boards (FSMB) at their Annual Meeting unanimously passed a resolution titled, “Development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice.”<sup>99</sup> This resolution was to direct FSMB to gather representatives from state medical boards to look at the creation of an Interstate Compact on license portability.<sup>100</sup>

The group consisted of a diverse set of representatives from states that differed in population, size, and geographic region.<sup>101</sup> They decided on eight consensus principles to include in a draft compact.<sup>102</sup> The principles consisted of:

- “Participation in an interstate compact for medical licensure will be strictly voluntary for both physicians and state boards of medicine;
- Participation in an interstate compact creates another pathway for licensure, but does not otherwise change a state’s existing Medical Practice Act;
- The practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located;
- An interstate compact for medical licensure will establish a mechanism whereby any physician practicing in the state will be known by,

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94. *Id.*

95. The Interstate Commission will be funded by assessing processing fees for the services of the IMLC; therefore, not burdening Compact states for funding. Also, the Commission can look for grants and other funding that support license portability. *Frequently Asked Questions*, *supra* note 11.

96. *Model Legislation*, *supra* note 2.

97. *Total Professionally Active Physicians*, KAISER FAM. FOUND. (Sept. 2016), <http://kff.org/other/state-indicator/total-active-physicians/?currentTimeframe=0>.

98. Because it is estimated that 80 percent of the current physical pool could be eligible to qualify under these bills, see *Frequently Asked Questions*, *supra* note 11, and due to the current total number of physicians active in the United States, see *Totally Professionally Active Physicians*, *supra* note 37, this is an estimated number.

99. *Understanding the Medical Licensure Compact*, FED’N OF ST. MED. BOARDS, <http://www.fsmb.org/policy/advocacy-policy/interstate-model-proposed-medical-lic> (last visited Nov. 2, 2016).

100. *Id.*

101. *Id.*

102. *Id.*

and under the jurisdiction of, the state medical board where the practice occurs;

- Regulatory authority will remain with the participating state medical boards, and will not be delegated to any entity that would administer a compact;
- A physician practicing under an interstate compact is bound to comply with the statutes, rules and regulations of each compact state wherein he / she chooses to practice;
- State boards participating in an interstate compact are required to share complaint / investigative information with each other; and
- The license to practice can be revoked by any or all of the compact states.”<sup>103</sup>

18 months later, the model legislation for the IMLC was completed.<sup>104</sup> On January 9, 2014, a group of 14 bipartisan United States Senators sent a letter to the Federation of State Medical Boards applauding their efforts on looking at solutions for medical telemedicine problems.<sup>105</sup> Humayun J. Chaudhry, DO, MACP, president and CEO of FSMB stated that “[t]he FSMB [was] pleased to have supported the state medical board community as it developed this compact to streamline licensure while maintaining patient protection as a top priority” and that FSMB “look[ed] forward to working with states that wish[ed] to implement this innovative new policy.”<sup>106</sup>

While the legislation has been widely popular, seen by the enactment in 17 states in only two years<sup>107</sup>, there has been some criticism and surrounding myths to the IMLC.<sup>108</sup> Some myths, according to the IMCL, are: (1) “The Compact overrides your state’s medical practice laws”<sup>109</sup>, (2) “The Compact will take away the disciplinary authority of your state’s medical board”<sup>110</sup>, (3) “The Compact redefines ‘physician’ to require your state’s physicians to participate in MOC”<sup>111</sup>, (4) “Physicians in your state who participate in the Compact would apply for a medical license from a private organization – not from the state’s medical board”<sup>112</sup>, and (5)

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103. *Id.*

104. *Id.*

105. *Thune, Enzi Applaud Federation of State Medical Boards Proposal to Advance Telemedicine*, SENATOR JOHN THUNE (Jan. 9, 2014), <http://www.thune.senate.gov/public/index.cfm/2014/1/thune-enzi-applaud-federation-of-state-medical-boards-proposal-to-advance-telemedicine>.

106. *Understanding the Medical Licensure Compact*, *supra* note 39.

107. *Toolkit: Compact Brochure*, INTERSTATE MED. LICENSURE COMPACT (Sep. 2016), [http://licenseportability.org/wp-content/uploads/2016/09/InterstateCompactBrochure\\_Sept\\_2016\\_FINAL.pdf](http://licenseportability.org/wp-content/uploads/2016/09/InterstateCompactBrochure_Sept_2016_FINAL.pdf).

108. *Myths*, INTERSTATE MED. LICENSURE COMPACT, <http://www.licenseportability.org/myths/> (last visited Nov. 1, 2016).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

“Carpetbagger”<sup>113</sup> physicians could come to your state under the Compact, to perform medical procedures currently forbidden by state law.”<sup>114</sup> However, the IMLC contends each of these myths are just that – myths.<sup>115</sup>

## 7. Conclusion

Overall, the enactment of IMLC in 17 states points to a trend in current legislation. While this legislation does not have a sole focus on alternative dispute resolution, the legislation does require participants to be participate in mediation or another form of binding dispute resolution. As shown, this could affect upwards of 726,000+ physicians. Overall, the IMLC is a significant trend in not only medical legislation but also alternative dispute resolution legislation due to the impact on current physicians.

### C. Nurse Licensure Compact

Bill Numbers: South Dakota H.B. 1153  
Summary: Nurses licensed in compact states can practice in the state they reside and other compact states  
Status: Signed by Governor March 14, 2016

## 1. Introduction

In 1998, the National Council of State Boards of Nursing (NCSBN) promulgated model legislation for states to enact the Nurse Licensure Compact (NLC).<sup>116</sup> Under this agreement, all nurses who were licensed in compact states would be able to practice in their state where they reside and other compact states.<sup>117</sup> These multistate licenses allow nurses to practice in any state without paying the fees or completing the paperwork to obtain a license in another state that has joined the compact.<sup>118</sup> Currently, there are 25 states that have joined the NLC.<sup>119</sup>

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113. A “carpetbagger” is “a nonresident or new resident who seeks private gain from an area often by meddling in its business . . .” *Carpetbagger*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/carpetbagger> (last visited Dec. 3, 2016).

114. *Myths*, *supra* note 48.

115. *Id.*

116. *Charter Documents*, NAT’L COUNCIL OF ST. BOARDS OF NURSING, <https://www.ncsbn.org/95.htm> (last visited Oct. 31, 2016).

117. *Id.*

118. Nurse Licensure Compact Adm’rs, *The Nurse Licensure Compact Explained*, NAT’L COUNCIL OF ST. BOARDS OF NURSING (Jun. 12, 2014), <https://www.ncsbn.org/364.htm>.

119. They are: Arizona, Arkansas, Colorado, Delaware, Idaho, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. *NLC Licensure Compact*, NAT’L COUNCIL OF ST. BOARDS OF NURSING, <https://www.ncsbn.org/nurse-licensure-compact.htm> (last visited Nov. 1, 2016).

In 2015, the NCSBN revised the language of the NLC<sup>120</sup>, superseding the previous version.<sup>121</sup> While the original language provided for dispute resolution processes,<sup>122</sup> the revised language makes specific provisions for mediation and arbitration of disputes between Compact states.<sup>123</sup> Several states spent the 2015 and 2016 legislative sessions approving the new language of the NLC.

## 2. Virginia S.B. 265

The Virginia bill is emblematic of bills adopting the new NLC language.<sup>124</sup> There are many changes made to the NLC in this update. Noteworthy among them are the addition of three provisions providing for mediation of disputes.

The provisions regarding dispute resolution provide that a Commission of NLC Administrators will provide assistance in resolving conflicts “that arise between party states and among party and non-party states.”<sup>125</sup> It also provides that the Commission will be tasked with creating procedures for mediation and other binding dispute resolution processes.<sup>126</sup> Finally, the new language provides that if the Commission cannot resolve the dispute, the parties may submit the dispute to an arbitration panel, the members of which will be appointed by the Compact administrator of each of the affected states, and that the majority decision of the panel of arbitrators will be final and binding.<sup>127</sup>

The inclusion of alternative dispute resolution methods in professional licensing disputes is in keeping with a trend predicted by the Council on Licensure, Enforcement and Regulation in their report from 2000.<sup>128</sup> These dispute resolution procedures have the potential to save both the time and money of states involved in disputes about the NLC.

## 3. Support and Opposition

This bill was sponsored by Senator Rosalyn Dance, a Democrat from the District 16.<sup>129</sup> Senator Dance was a nurse before being elected to the state senate.<sup>130</sup> Even though the bill was sponsored by a minority party member, it moved quickly through the legislative process.<sup>131</sup>

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120. NCSBN Delegate Assembly Adopts Revised Nurse Licensure Compacts, NAT'L COUNCIL OF ST. BOARDS OF NURSING (May 4, 2015), <https://www.ncsbn.org/7320.htm>.

121. *Charter Documents*, *supra* note 1.

122. NAT'L COUNCIL OF STATE BDS. OF NURSING, ENHANCED NLC MODEL LEGISLATION § IX(b) (May 4, 2015), available at [https://www.ncsbn.org/NLC\\_Final\\_050415.pdf](https://www.ncsbn.org/NLC_Final_050415.pdf) [hereinafter NLC MODEL LEGISLATION].

123. *Id.* at § IX(c).

124. S. 265, 2016 Gen. Assemb., Reg. Sess. (Va. 2016).

125. *Id.* at § 54.1-3040.9(C)(1).

126. *Id.* at § 54.1-3040.9(C)(2).

127. *Id.* at § 54.1-3040.9(C)(3).

128. Pam Brinegar & Bruce Douglas, *Alternative Dispute Resolution and Professional Licensing*, COUNCIL ON LICENSURE, ENFORCEMENT & REG. (2000), <http://www.clearhq.org/resources/96-1.htm>.

129. *SB 265 Nurse Licensure Compact*, VA. LEGIS. INFO. SYS., <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=bil&val=sb265> (last visited Nov. 2, 2016).

130. *Rosalyn R. Dance*, SENATE OF VA., <http://apps.senate.virginia.gov/Senator/member-page.php?id=S94> (last visited Nov. 2, 2016).

131. S. 265, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (status provided by Westlaw bill tracking report).

The bill was pre-filed and assigned to the Senate Committee on Education and Health on January 6, 2016.<sup>132</sup> On January 6, the bill was introduced and referred to committee.<sup>133</sup> On January 28, the bill was reported favorably out of committee and passed the Senate on February 2.<sup>134</sup> On February 5, the bill was reported to the House Committee on Health, Welfare, and Institutions.<sup>135</sup> The House Committee reported the bill favorably on February 18 and the House passed the bill on February 22.<sup>136</sup> The bill was signed by the governor on March 1, 2016.<sup>137</sup> The bill is set to become effective on December 31, 2018, or when 26 states have passed the new language, whichever is sooner.<sup>138</sup>

Judging from the rapid movement of the bill, there was little opposition. The bill passed unanimously out of each committee, as well as on the floor of each body.<sup>139</sup> Generally, the NLC is favored by the states who participate due to the flexibility it provides to their citizens.<sup>140</sup> Even with its relative popularity, the NLC is not without its critics. Though it did not pass and the session is now adjourned, the Rhode Island legislature entertained an act that would repeal the NLC and create their own similar agreement with only Connecticut and Massachusetts.<sup>141</sup>

#### 4. Conclusion

Through mediation, parties will, ideally, feel both procedural and substantive satisfaction, in that they feel the process was fair and conducted in a manner that allows them to support the outcome.<sup>142</sup> Parties should also be psychologically satisfied with the outcome, in that they feel that were heard and treated fairly.<sup>143</sup> In 2015, the NCSBN recognized the value of these outcomes of mediation, and the importance of other alternative dispute resolution methods by amending the NLC to include mediation and arbitration as the preferred method for settling disputes between compact states.<sup>144</sup>

#### D. Availability of ADR in Eminent Domain Disputes

Bill Numbers: Rhode Island H.B. 7204  
 Summary: Modernizing eminent domain laws to include ADR  
 Status: Passed House June 1, 2016, Senate Committee Recommends to Hold for Further Study June 15, 2016

132. *Id.* (status provided by Westlaw bill tracking report).

133. *Id.* (status provided by Westlaw bill tracking report).

134. *Id.* (status provided by Westlaw bill tracking report).

135. *Id.* (status provided by Westlaw bill tracking report).

136. *Id.* (status provided by Westlaw bill tracking report).

137. S. 265 (status provided by Westlaw bill tracking report).

138. S. 265, 2016 Gen. Assemb., Reg. Sess. (Va. 2016)

139. *Id.* (status provided by Westlaw bill tracking report).

140. *NLC Licensure Compact*, *supra* note 4.

141. S. 329, 2015 Gen. Assemb., Reg. Sess. (R.I. 2015).

142. Brinegar & Douglas, *supra* note 13.

143. *Id.*

144. NLC MODEL LEGISLATION, *supra* note 7, at § IX(c).

### 1. Introduction

Eminent domain, or the right of the government and its agents to take private lands and appropriate them for public use<sup>145</sup>, has strong supporters and opponents. South Dakota, with TransCanada and the Keystone XL pipeline knocking at their door<sup>146</sup>, is no different. This year, led by Representative Timothy R. Johns, the South Dakota legislature passed a bill to modernize their eminent domain laws.<sup>147</sup>

### 2. South Dakota H.B. 1153

This bill is an example of states modernizing their laws to include alternative forms of dispute resolution.

This one sentence bill has a clear purpose: “The parties may by agreement refer a dispute that is the subject of a proceeding under this chapter for resolution by mediation using the services of a mediator selected by the parties.”<sup>148</sup> The bill originally read: “That eminent domain be reformed by consensus.”<sup>149</sup> Amendments on the House floor made the purpose of the bill clearer to those more familiar with the term “mediation.”<sup>150</sup> Representative Johns, a lawyer and mediator when not at the state house, said that mediation is “a great process.”<sup>151</sup>

### 3. Support and Opposition

Sponsored by a Republican incumbent in an overwhelming Republican state legislature, H.B. 1153 breezed through the legislative process.<sup>152</sup> It was introduced on January 28, 2016 by Representative Timothy R. Johns and passed to the House Committee on State Affairs the same day.<sup>153</sup> On February 11, the bill was transferred from the State Affairs Committee to the House Committee on the Judiciary.<sup>154</sup> The bill was voted do pass with an amendment on February 19 and the committee amendment was adopted on the House floor on February 22.<sup>155</sup> The bill passed the House unanimously on February 23 and went to the Senate.<sup>156</sup> It was assigned to the Senate Judiciary Committee on February 24 and voted do pass on

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145. *What is Eminent Domain?* THE LAW DICTIONARY, <http://thelawdictionary.org/eminant-domain/> (last visited Oct. 31, 2016).

146. Bob Mercer, *Mediation of eminent-domain cases boosted in House*, RAPID CITY J. (Feb. 20, 2016), [http://rapidcityjournal.com/news/local/mediation-of-eminant-domain-cases-boosted-in-house/article\\_d77f2798-b6d5-5cfd-a2fe-5f677a6f10a6.html](http://rapidcityjournal.com/news/local/mediation-of-eminant-domain-cases-boosted-in-house/article_d77f2798-b6d5-5cfd-a2fe-5f677a6f10a6.html).

147. H.R. 1153, 91st Leg., Reg. Sess. (S.D. 2016).

148. *Id.*

149. *2016 Session - Bill History*, S.D. LEG., [http://www.sdlegislature.gov/Legislative\\_Session/Bills/Bill.aspx?File=HB1153P.htm&Session=2016](http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?File=HB1153P.htm&Session=2016) (last visited Nov. 2, 2016).

150. Mercer, *supra* note 2.

151. *Id.*

152. *Representative Timothy R. Johns*, S.D. LEG., <http://sdlegislature.gov/legislators/legislators/memberdetail.aspx?session=2016&member=1038&cleaned=true> (last visited Nov. 1, 2016).

153. S.D. H.R. 1153.

154. *Id.*

155. *Id.*

156. *Id.*

March 2.<sup>157</sup> The next day the bill passed the Senate unanimously.<sup>158</sup> It arrived on the governor's desk March 9 and was signed on March 14, 2016.<sup>159</sup>

The bill made several appearances in the South Dakota news, and many appear to be supportive of the measure. Brett Koenecke, a lawyer for utility companies, testified in support of the measure in the House committee.<sup>160</sup> He identified the importance of the bill as modernizing state laws and making it clear that mediation was available for the resolution of eminent domain disputes.<sup>161</sup> "We have a 19th century statute dealing with 21st century problems," he said.<sup>162</sup>

Another supporter of the bill was the Dakota Rural Action blog. The blog describes itself as a "grassroots organization" that, among other things, summarizes legislation and its potential effects on rural Dakotans.<sup>163</sup> Dakota Rural Action describes H.B. 1153 as one of the "bright spots" in the 2016 legislative year and the change to eminent domain law as "positive."<sup>164</sup> The blog also quotes Koenecke as saying the bill is "the most harmless bill of the session and might be also the most helpful."<sup>165</sup> The blog also identifies how the changes to eminent domain law will potentially make such disputes less contentious and more easily settled.<sup>166</sup>

There seems to have been little vocal opposition to the bill.

#### 4. Conclusion

South Dakota H.B. 1153 was a non-controversial, well-supported bill. The purpose of the bill was not to introduce alternative dispute resolution into eminent domain disputes, but to codify the usage of alternative methods and demonstrate their importance in such disputes.

##### A. Comparing Two Ombudsman Offices in New Jersey

Bill Numbers: 2014 NJ S.B. 451  
2016 NJ A.B. 3824  
Summary: Creating ombudsman offices focusing on special education and individuals with intellectual and development disabilities and their families  
Status: Passed in January 2016; Engrossed on June 27, 2016

#### 1. Introduction

Within the past year, two bills establishing ombudsman offices have been introduced in the New Jersey Legislature. One bill centers on special education, while

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157. *Id.*

158. *Id.*

159. H.R. 1153.

160. Mercer, *supra* note 2.

161. *Id.*

162. *Id.*

163. DAKOTA RURAL ACTION, <http://www.dakotarural.org/> (last visited Oct. 31, 2016).

164. Robin EH. Bagley, *Eminent Domain Reforms Inch Forward*, DAKOTA RURAL ACTION (Mar. 9, 2016), <https://legislation.dakotarural.org/blog-2/>.

165. *Id.*

166. *Id.*

the other focuses on individuals with intellectual and developmental disabilities and their families. The bills are almost identical, requiring similar duties and expectations for both offices. However, reaction to the bills has been wildly diverse. While one bill has passed, the other has stalled in the legislature. Whether it will pass, and whether the establishment of that ombudsman office is needed or wanted by the people of the community, will only be revealed with time.

## 2. *The Bills*

### *a. S-451*

The bill was introduced by Senators M. Teresa Ruiz and Diane Allen on January 14, 2014.<sup>167</sup> The bill passed unanimously in the Senate<sup>168</sup> and two votes shy of unanimous in the Assembly.<sup>169</sup> It was then approved and signed into law by Governor Chris Christie on January 19, 2016.<sup>170</sup>

The bill sought to establish the Office of the Special Education Ombudsman within the Department of Education.<sup>171</sup> The purpose of the ombudsman is to “serve as a resource to provide information and support to parents, students, and educators regarding special education rights and services.”<sup>172</sup> The ombudsman will be appointed by the Commissioner of Education, and should be someone “qualified by training and experience . . . . [A] person of recognized judgment, integrity, and objectivity, and . . . skilled in communication, conflict resolution, and professionalism.”<sup>173</sup>

The ombudsman’s duties include “serv[ing] as a source of information for parents, students, educators, and interested members of the public to help them better understand State and federal laws and regulations governing special education,” as well “provid[ing] information and support to parents of students with disabilities in navigating and understanding the process for obtaining special education evaluations and services.”<sup>174</sup>

In regards to alternative dispute resolution, the ombudsman shall “provide information and communication strategies to parents and school districts . . . and . . . educate parents on the available options for resolving such disputes, including due process hearings, mediation, and other alternative dispute resolution processes.”<sup>175</sup>

The ombudsman is required to make an annual report to the State Board of Education and the Commissioner of Education, which will include a summary of the services the ombudsman provided and any recommendations regarding the implementation of special education procedures and services.<sup>176</sup>

The bill was supported by the New Jersey School Board Association based on “policy stressing the importance of parental involvement and of awareness of the

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167. S. 451. (status provided in Westlaw bill tracking report).

168. *Id.* (status provided in Westlaw bill tracking report).

169. *Id.* (status provided in Westlaw bill tracking report).

170. *Id.* (status provided in LEXIS bill tracking report).

171. S. 451.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

needs of educationally disabled students and their parents.”<sup>177</sup> The Senate Budget and Appropriations Committee reported favorably on the bill, although it did note that the bill “may lead to an indeterminate increase in State expenditures for compensation and other miscellaneous costs.”<sup>178</sup>

Senator Allen said the bill would not seek to replace the state’s role in mediating and resolving specific disputes, but rather would focus on the ombudsman serving a neutral role between families and schools.<sup>179</sup> The Senator stated, “If you have a dispute, and this gives you information to help that, then that should be a way to go, too.”<sup>180</sup>

*b. A-3824*

The bill was introduced by Assemblywoman Valeria Huttle on May 26, 2016.<sup>181</sup> The bill was passed by the Assembly on June 27, 2016,<sup>182</sup> and has been referred to the Senate Budget and Appropriations Committee.<sup>183</sup>

The bill seeks to establish the “Office of Ombudsman for Individuals with Intellectual or Developmental Disabilities and their Families.”<sup>184</sup> While the office would be allocated within the Department of the Treasury, the bill states that the office would be independent of any supervision or control by the Department of the Treasury.<sup>185</sup> The ombudsman would “serve as a resource to provide information and support to individuals with intellectual or developmental disabilities and their families.”<sup>186</sup> The governor shall appoint the ombudsman.<sup>187</sup>

The ombudsman’s duties include “serv[ing] as a source of information for individuals with intellectual or developmental disabilities and their families and interested members of the public, to help them better understand State and federal laws and regulations governing individuals with intellectual or developmental disabilities,” as well as providing information regarding and assistance in obtaining services and supports from the Division of Developmental Disabilities in the Department of Human Services and the Division of Children’s System of Care in the Department of Children and Families.<sup>188</sup>

In regards to alternative dispute resolution, the ombudsman shall provide information and communication strategies to individuals with intellectual or develop-

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177. *New Law Creates Special Education Ombudsman*, N.J. SCH. BOARDS ASS’N (Feb. 9, 2016), <http://www.njsba.org/news-publications/school-board-notes/february-9-2016-vol-xxxix-no-25/new-law-creates-special-education-ombudsman/>.

178. SENATE BUDGET & APPROPRIATIONS COMM., S. 216-451, 1st Reg. Sess. (N.J. 2015) (report provided in Westlaw legislative history report).

179. John Mooney, *Special-Ed Ombudsman Could Help Parents Get Answers, Settle Disputes*, NJ SPOTLIGHT (Dec. 9, 2015), <http://www.njspotlight.com/stories/15/12/08/special-ed-ombudsman-could-help-parents-get-answers-settle-disputes/>.

180. *Id.*

181. Assemb. 3824, 217th Leg., 1st Reg. Sess. (N.J. 2016),

182. *Id.* (status provided in Westlaw bill tracking report).

183. *Id.* (status provided in Westlaw bill tracking report)

184. Assemb. 3824, [http://www.njleg.state.nj.us/2016/Bills/A4000/3824\\_I1.HTM](http://www.njleg.state.nj.us/2016/Bills/A4000/3824_I1.HTM) (last visited Nov. 9, 2016).

185. *Id.* at § 1a.

186. *Id.*

187. *Id.* at § 1b.

188. *Id.* at § 2a(1).

mental disabilities and their families for “resolving a disagreement with the Division of Children’s System of Care, the Division of Developmental Disabilities, the Department of Children and Families, or the Department of Human Services regarding the evaluation, placement, or provision of services and supports.”<sup>189</sup> The ombudsman is ordered to “work neutrally and objectively with all parties to help ensure that a fair process is followed in the resolution of disputes.”<sup>190</sup>

The ombudsman is required to make an annual report to the Commissioner of Human Services and the Commissioner of Children and Families.<sup>191</sup> The report will include a summary of the services provided by the ombudsman.<sup>192</sup> Furthermore, the ombudsman is instructed to identify any patterns of complaint which emerge, and make recommendations regarding the implementation of procedures with respect to providing individuals with intellectual or developmental disabilities supports and services.<sup>193</sup>

The Office of Legislative Services (OLS) noted that the expenditures to establish the ombudsman office would vary depending on the design, operation, and implementation of the office.<sup>194</sup> Based on the experiences of similar offices, OLS stated the cost may range between \$150,000 and \$1.9 million annually.<sup>195</sup> OLS pointed to the requirements of ensuring a fair process be followed, as well as identifying patterns of complaints, as cost drivers.<sup>196</sup> As an example, OLS noted that the Office of the Ombudsman for the Institutionalized Elderly has the same duties, and its budget is \$3.068 million annually.<sup>197</sup> The OLS estimated that if the office is implemented “to be an active part of dispute resolutions and complaint collection the costs to operate the office could be approximately \$1.9 million.”<sup>198</sup> OLS concluded that other programs in the state are tasked with protecting and advocating with and on the behalf of individuals with intellectual or developmental disabilities, such as Disability Rights New Jersey, and that those programs could supplant the activities of the office and reduce the cost.<sup>199</sup>

Disability Rights New Jersey’s Executive Director, Joseph Young, said, “I don’t think it hurts to have someone out there trying to portray neutral information.”<sup>200</sup> However, Young stated that it was “unfortunate there have to be all these specialty ombudsmen.”<sup>201</sup> He explained that in the past there was an office for individuals with disabilities in each county, but that they have since been merged with offices for aging citizens.<sup>202</sup> Young also expressed concern about where the

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189. *Id.* at § 2a(3).

190. Assemb. 3824, § 2a(4).

191. *Id.* at § 3a.

192. *Id.*

193. *Id.* at § 2a(5).

194. OFFICE OF LEGISLATIVE SERVS., LEGISLATIVE FISCAL ESTIMATE, Assemb. 217-3824, 1st Sess., at 1 (N.J. 2016), [http://www.njleg.state.nj.us/2016/Bills/A4000/3824\\_E1.PDF](http://www.njleg.state.nj.us/2016/Bills/A4000/3824_E1.PDF).

195. *Id.*

196. *Id.* at 2-3.

197. *Id.* at 3.

198. *Id.*

199. *Id.*

200. Colleen O’Dea, *Do Disabled, Their Families Need Ombudsman To Deal With Maze Of Services?*, NJ SPOTLIGHT (June 23, 2016), <http://www.njspotlight.com/stories/16/06/22/do-disabled-their-families-need-to-deal-with-maze-of-state-services/>.

201. *Id.*

202. *Id.*

money would find the money to fund the office, stating, “If the money has to come out of the services, that would be a problem.”<sup>203</sup>

The New Jersey Council on Developmental Disabilities stated that it would be reserving judgment on the bill until it could get clarification on the bill.<sup>204</sup> Its chair, Stephanie Pratico, stated that “[w]e really need to understand better what its role would be, what authority it would have. I think really what our community needs is some oversight and authority.”<sup>205</sup> Pratico noted that “[t]he last thing we need to do is create another layer in there. The systems are complex enough to try to navigate.”<sup>206</sup>

Assemblywoman Huttie likened the ombudsman to a GPS, saying that “[t]he ombudsman would . . . be like a one-stop shopping place with a wealth of information.”<sup>207</sup> Huttie rebutted the concerns regarding funding, saying, “I don’t think we are talking about a lot of money . . . . It would not take away from services; it would be adding and making services available.”<sup>208</sup>

### 3. Conclusion

While A-3824 is structured almost identically to S-451, the reaction has not been as positive. While the special education ombudsman was viewed as a benefit to the people within the special education field, the needs of both fields are not duplicative.

Some of the uncertainty arises due to a lack of information and specificity. While S-451 was listed purely as an information service, and not a replacement for existing dispute resolution programs, A-3824’s purpose is less clear because of the programs present in the state. People within the field of intellectual and developmental disabilities seem to seek someone who has “teeth” within the government and can ensure appropriate services are being provided. However, the assembly members involved seem to be content establishing yet another informational office. Even the Office of Legal Services noted that it did not know the extent of A-3824’s involvement in advocacy and dispute resolution.

Even supposing the purpose if A-3824 is clarified, it appears establishing an ombudsman who merely provides information is not enough to make a difference in the lives of individuals with intellectual or developmental disabilities and their families. If that is the case, A-3824 will merely add another layer of complexity without providing any real advantage in the already over-complicated field of getting services for individuals with intellectual and developmental disabilities in New Jersey.

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203. *Id.*

204. *Id.*

205. *Id.*

206. O’Dea, *supra* note 36.

207. *Id.*

208. *Id.*

## II. HIGHLIGHTS

A. *Arizona Senate Bill No. 1293*<sup>209</sup>

Arizona Bill 1293 is about mediation, confidential communications, and exceptions.<sup>210</sup> The bill was introduced by Senator Adam Driggs.<sup>211</sup> After the bill went to the Senate, it was first read on January 26, 2016.<sup>212</sup> On May 18, 2016, it was signed Governor Doug Ducey.<sup>213</sup> In that time frame, it was assigned to different committees, went through the Senate's majority and minority caucuses, and was transmitted to the House where this process was repeated.<sup>214</sup> The purpose of the bill was to ensure the confidentiality of the mediation process.<sup>215</sup> The now statute provides that communications made, materials created for or used, and acts occurring during a mediation are confidential.<sup>216</sup> There are five exceptions for how the information may be discovered or admitted into evidence at a subsequent trial:

1. All of the parties to the mediation agree to the disclosure.
2. The communication, material or act is relevant to a claim or defense made by a party to the mediation against the mediator or the mediation program arising out of a breach of a legal obligation owed by the mediator to the party.
3. The disclosure is required by statute.
4. The disclosure is necessary to enforce an agreement to mediate.
5. The disclosure is made in a report to a law enforcement officer, the department of child safety or adult protective services by a court appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, physical injury or a reportable offense.<sup>217</sup>

This now statute also grants partial immunity to the mediator, as a mediator is not subject to civil liability except for acts or omissions that involve intentional misconduct or reckless disregard of a substantial risk of a significant injury to the rights of others.<sup>218</sup>

B. *California Senate Bill No. 1372*

California Senate Bill 1372 is about mediation and confidentiality.<sup>219</sup> The bill was introduced by Senator Bob Wieckowski.<sup>220</sup> After the bill was introduced on February 19, 2016, it went to the Committee on Rules for assignment.<sup>221</sup> It was set for hearing on May 3, 2016, but was canceled at the request of the author.<sup>222</sup> This bill would provide that a mediation ends if there is no communication between the

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209. S. 1293, 52d Leg., 2d Reg. Sess. (Ariz. 2016).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. S. 1293.

216. ARIZ. REV. STAT. ANN. § 12-2238(B) (2016).

217. *Id.*

218. *Id.* at § 12-2238(F).

219. S. 1372, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

220. *Id.*

221. *Id.* (status provided by Westlaw bill tracking report).

222. *Id.* (status provided by Westlaw bill tracking report).

mediator and any of the parties to the mediation regarding the dispute for 14 calendar days.<sup>223</sup> This is for purposes of confidentiality, as existing law provides a mediation ends when certain conditions are satisfied, including the amount of days there is no communication between the mediator and any of the mediating parties relating to the dispute.<sup>224</sup> This would be an extension of what the Evidence Code previously provided of 10 calendar days.<sup>225</sup> While the amount of days has not been voted on, under existing law, when a person consults a mediator or a mediation service to retain mediation services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence or subject to discovery.<sup>226</sup> Furthermore, all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified.<sup>227</sup>

C. *Missouri House Bill 2811*

House Bill 2811 (HB 2811), which “[r]equires out-of-network physicians working at in-network hospitals to notify patients of the availability of mediation for billing disputes”<sup>228</sup> was introduced and read for the first time on March 15, 2016.<sup>229</sup> HB 2811 was sponsored by Representative Justin Hill from the 108<sup>th</sup> District.<sup>230</sup> On March 16, 2016, the bill was read a second time.<sup>231</sup> Subsequently, on May 13, 2016, the bill was referred to the House Committee on Health and Mental Health Policy.<sup>232</sup> A hearing was not scheduled on the bill; therefore, the bill did not make it out of committee.<sup>233</sup>

D. *Missouri House Bill 1718*

House Bill 1718 (HB 1718), which “[c]hanges the Uniform Arbitration Act regarding agreements between employers and at-will employees” was pre-filed on December 12, 2015.<sup>234</sup> HB 1718 was sponsored by Representative Kevin Corlew from the 14<sup>th</sup> District and co-sponsored by Representative Kirk Mathews from the 110<sup>th</sup> District.<sup>235</sup> After being read a first and second time, HB 1718 was referred to the House Committee on Workforce Standards and Development.<sup>236</sup> On February

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223. S. 1372.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Activity History for HB 2811*, MO. HOUSE OF REPRESENTATIVES <http://www.house.mo.gov/BillActions.aspx?bill=HB2811&year=2016&code=R> (last visited Nov. 2, 2016).

229. H.R. 2811, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016).

230. *Id.*

231. *Activity History for HB 2811*, *supra* note 1.

232. *Id.*

233. Mo. H.R. 2811.

234. *Activity History for HB 1718*, MO. HOUSE OF REPRESENTATIVES <http://www.house.mo.gov/BillActions.aspx?bill=HB1718&year=2016&code=R> (last visited Nov. 2, 2016).

235. *Co-Sponsors for HB 1718*, MO. HOUSE OF REPRESENTATIVES <http://www.house.mo.gov/CoSponsors.aspx?bill=HB1718&year=2016&code=R> (last visited Nov. 2, 2016).

236. *Activity History for HB 1718*, *supra* note 7.

8, 2016, HB 1718 had a public hearing and was passed out of committee on February 15, 2016.<sup>237</sup> On February 16, HB 1718 was referred to the House Select Committee on Labor and Industrial Relations.<sup>238</sup> HB 1718 was voted out of that committee on February 17.<sup>239</sup> The House adopted the House Committee Substitution for HB 1718 on April 6.<sup>240</sup> After making it to the Senate, and through the Senate Committee on Small Business, Insurance, and Industry, HB 1718 was placed on the Senate Informal Calendar and did not pass the Senate chamber.<sup>241</sup>

*E. Nevada Senate Bill 442*<sup>242</sup>

This bill, revising provisions governing arbitration, was introduced by the Senate Judiciary Committee on March 23, 2015.<sup>243</sup> The bill was designed to comply with the Uniform Arbitration Act of 2000 and place more restrictions on arbitrators.<sup>244</sup> The bill states that an arbitrator may not consolidate separate arbitral proceedings or other claims unless all parties expressly agree to the consolidation.<sup>245</sup> Furthermore, arbitrators must disclose “known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceedings,” such as financial interest or past relationships.<sup>246</sup> The bill granted power to the court in that if an arbitrator does not disclose a relevant fact, the court shall vacate an award made prior to the fact being discovered, or if no award has been made, remove the arbitrator.<sup>247</sup> It was referred to the Senate Committee on Judiciary, amended, and passed the Senate on April 15, 2015.<sup>248</sup> It was then referred to the Assembly Committee on Judiciary, amended, and passed the Assembly on May 22, 2015.<sup>249</sup> It was delivered to the governor on May 29, 2015, and approved June 4, 2015.<sup>250</sup>

*F. New York Senate Bill 7954*<sup>251</sup>

Tony Avella introduced the bill prohibiting contracts for the purchase or lease of consumer goods from restricting venue in an action relating to such contract on May 31, 2016.<sup>252</sup> There is an Assembly bill promoting the same change, introduced by Helene Weinstein, Matthew Titone, and Jeffery Dinowitz on May 4, 2016.<sup>253</sup> The Senate Bill was introduced and referred to the Committee on Senate Judiciary.<sup>254</sup> A Senate Committee Report was released June 2, 2016, which stated that

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237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. H.R. 1718, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016).

242. S. 442, 78th Leg., Reg. Sess. (Nev. 2015).

243. *Id.* (status provided by Westlaw bill tracking report).

244. S. 442.

245. NEV. REV. STAT. § 38.224.4 (2016).

246. *Id.* at 38.227.1.

247. *Id.* at 38.227.4.

248. S. 442 (status provided by Westlaw bill tracking report).

249. *Id.* (status provided by Westlaw bill tracking report).

250. *Id.* (status provided by Westlaw bill tracking report).

251. S. 7954, 238th Leg., Reg. Sess. (N.Y. 2016).

252. *Id.*

253. Assemb. 9995, 238th Leg., Reg. Sess. (N.Y. 2016).

254. S. 7954 (status provided by Westlaw bill tracking report).

the purpose of the bill is to protect consumers from boilerplate contractual clauses that set venue in “far flung locations which are inconvenient or impossible for consumers to attend.”<sup>255</sup> The bill addresses contracts involving consumer goods in which the contract purports to “designate, restrict, or limit the venue in which a claim shall be adjudicated or arbitrated.”<sup>256</sup> If a clause in a contract does so, it will be deemed void as against public policy; this does not affect the validity of the rest of the contract.<sup>257</sup> Furthermore, the bill mandates that the place of trial or arbitration shall take place in the county where the consumer resides.<sup>258</sup> The bill status has not changed since it was referred to the Committee on Senate Judiciary on May 31, 2016.<sup>259</sup>

### G. South Dakota House Bill 1153

South Dakota House Bill 1153 (H.B. 1153), an act to allow parties to agree to resolve an eminent domain dispute by mediation,<sup>260</sup> was introduced on January 28, 2016, by Representative Timothy R. Johns and passed to the House Committee on State Affairs on the same day.<sup>261</sup> On February 11, the bill was withdrawn from the State Affairs Committee and transferred to the House Committee on the Judiciary.<sup>262</sup> The bill was voted do pass with an amendment on February 19.<sup>263</sup> The committee amendment was adopted on the House floor on February 23.<sup>264</sup> The bill passed the House unanimously on February 23 and transferred to the Senate.<sup>265</sup> It was assigned to the Senate Judiciary Committee on February 24 and voted do pass on March 1.<sup>266</sup> Two days later, the bill passed the Senate unanimously.<sup>267</sup> It arrived on Governor Dugaard’s desk March 9 and was signed into law on March 14, 2016,<sup>268</sup> creating the option of eminent domain disputes to be settled through mediation.<sup>269</sup>

### H. Rhode Island House Bill 7204<sup>270</sup>

Rhode Island House Bill 7204, “An Act Relating to Property – Condominium Dispute Resolution”, was introduced by Representatives Arthur J. Corvese, Samuel A. Azzinaro, Thomas Winfield, Stephen R. Ucci, and Helio Melo on January 15, 2016, and assigned to the House Committee on the Judiciary.<sup>271</sup> It was scheduled for hearing on January 26, 2016, and the committee recommended the measure be

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255. *Id.* (report provided by Westlaw bill activity).

256. S. 7954, at § 514(2).

257. *Id.*

258. *Id.* at § 514(3).

259. S. 7954 (status provided by Westlaw bill tracking report).

260. H.R. 1153, 91st Leg., Reg. Sess. (S.D. 2016).

261. *Id.* (status provided by Westlaw bill tracking report).

262. *Id.* (status provided by Westlaw bill tracking report).

263. *Id.* (status provided by Westlaw bill tracking report).

264. *Id.* (status provided by Westlaw bill tracking report).

265. *Id.* (status provided by Westlaw bill tracking report).

266. H.R. 1153 (status provided by Westlaw bill tracking report).

267. *Id.* (status provided by Westlaw bill tracking report).

268. *Id.* (status provided by Westlaw bill tracking report).

269. *Id.*

270. H.R. 7204, 2016 Gen. Assemb., Reg. Sess. (R.I. 2016).

271. *Id.* (status provided by Westlaw bill tracking report).

held until further research could be conducted.<sup>272</sup> After languishing in committee for nearly four months, the committee reheard the bill on May 24, 2016, and recommended passage to the House floor.<sup>273</sup> The House passed the bill on June 1, 2016, and it was sent to the Senate.<sup>274</sup> On June 9, the bill was assigned to the Senate Committee on the Judiciary.<sup>275</sup> In the hearing on June 15, the Senate committee recommended that the measure be held for further study.<sup>276</sup> The session has since adjourned, so the bill did not pass in the 2016 legislative session.<sup>277</sup> This bill would have allowed condominium residents to submit their disputes to arbitration, whether or not suit had been filed.<sup>278</sup> It also would have allowed complainants to reserve their right to a jury trial following arbitration.<sup>279</sup>

### III. CATALOG OF STATE LEGISLATION

#### ALABAMA

Bills Enacted: None.

Bills Pending: None.

#### ALASKA

Bills Enacted: 2015 A.K. S.B. 35 (Manufacturer or distributor mediation or arbitration); 2015 A.K. H.B. 78 (NS) (Mediation for Public Utility Disputes as part of public utility rate); 2015 A.K. H.B. 372 (Health Care Providers use mediation to solve disputes).

Bills Pending: 2015 A.K. S.B. 122 (NS) (Department can act as mediator and appoint deputy commissioners of conciliation in labor disputes); 2015 A.K. H.B. 238 (NS) (Interstate Commission promulgates rules providing for both mediation and binding dispute resolution as appropriate).

#### ARIZONA

Bills Enacted: 2015 A.Z. S.B. 1293 (NS); 2016 Ariz. Legis. Servs. Ch. 338 (Mediation process is confidential and cannot be discovered or admitted into evidence but for a few exceptions); AZ Legis 299 (2016) (HB 2504) (ADR for physical therapists); 2016 Ariz. Legis. Serv. Ch. 294 (H.B. 2362) (ADR in nurse context); 2016 Ariz. Legis. Serv. Ch. 298 (H.B. 2503) (ADR in state licensed psychologists context); 2016 Ariz. Legis. Serv. Ch. 193 (H.B. 2348) (Mediation for motor vehicle dealer and manufacturer rates); 2016 AZ H.B. 2692 (NS) (ADR in contracts between a pharmacy benefits manager and a network pharmacy).

Bills Pending: 2016 AZ S.B. 1426 (NS) (Ombudsman advocating for business owner and attempts to resolve regulatory or procedural complaints by agreement,

272. *Id.* (status provided by Westlaw bill tracking report).

273. *Id.* (status provided by Westlaw bill tracking report).

274. *Id.* (status provided by Westlaw bill tracking report).

275. *Id.* (status provided by Westlaw bill tracking report).

276. H.R. 7204 (status provided by Westlaw bill tracking report).

277. *Id.* (status provided by Westlaw bill tracking report).

278. *Id.*

279. *Id.*

mediation, or conciliation); 2016 A.Z. S.B. 1334 (NS) (Mediation for state employees); 2016 AZ S.B. 1333 (NS) (ADR in collective bargaining situations).

#### ARKANSAS

Bills Enacted: 2015 AK S.B. 35 (NS) (In a controversy between a manufacturer and a new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer nor the new motor vehicle dealer is required to submit the controversy to arbitration).

Bills Pending: None.

#### CALIFORNIA

Bills Enacted: 2015 CA A.B. 626 (NS) (If claimant disputes public entity's response, must go to nonbinding mediation before court); 2015 CA S.B. 950 (Excluded employee who has filed certain grievances with the Department of Human Resources (CalHR) to request arbitration of the grievance if specified conditions are met); 2015 CA S.B. 1007 (Provides that a party to an arbitration has the right to have a certified shorthand reporter transcribe any deposition, proceeding, or hearing as the official record); 2015 CA S.B. 1060 (NS) (Must mediate in good faith before changing an adoption agreement); 2015 CA S.B. 1078 (New requirements for arbitrators); 2015 CA A.B. 731 (NS) (A state or local agency conducting a truancy-related mediation or prosecuting a pupil or a pupil's parent or legal guardian shall provide, anyone who referred a truancy mediation using the most cost-effective method possible with the outcome of each referral); 2015 CA A.B. 897 (Recasts the provision regarding representation and assistance of parties, thus making the provision applicable to any arbitration or conciliation proceeding conducted pursuant to the statutory provisions that govern arbitration and conciliation of international commercial disputes).

Bills Pending: 2015 CA S.B. 1372 (NS) (Mediation ends if there is no communication between the mediator and any of the parties to the mediation relating to the dispute for 14 calendar days); 2015 CA A.B. 1174 (NS) (Would require the bureau to track and retain date on every mediation attempted and completed by the bureau for each automotive repair dealer, including the type of complaint being mediated); 2015 CA A.B. 874 (NS) ("'Mediation' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice."); 2015 CA A.B. 2879 (Requires private arbitration of a person seeking to enforce such a waiver to have the burden of proving that the waiver was knowing and voluntary and not made as a condition of employment).

#### COLORADO

Bills Enacted: 2016 CO S.B. 177 (NS) (Requires the mediation to be conducted by a mediator jointly selected by the parties. Specifies the method of selecting a 3-

mediator panel if the parties are unable to agree on the selection of a single mediator. Specifies the minimum qualifications of the mediator and the method for allocating the payment of the fees and costs of the mediation).

Bills Pending: 2016 CO H.B. 1217 (NS) (Requires the officer to develop, maintain, and publish a statewide referral list containing the names and contact information for independent contractors who provide mediation or arbitration services on HOA matters).

#### CONNECTICUT

Bills Enacted: None.

Bills Pending: 2016 CT H.B. 5567 (Mediation in foreclosure situations); 2016 CT H.B. 5639 (The provisions of the Connecticut Rapid Arbitration Act provide state business entities with a method by which they may resolve business disputes in a prompt, cost-effective and efficient manner, through voluntary arbitration conducted by expert arbitrators, and that ensures rapid resolution of such business disputes).

#### DELAWARE

Bills Enacted: None.

Bills Pending: None.

#### FLORIDA

Bills Enacted: None.

Bills Pending: 2016 FL S.B. 1502 (Mandatory nonbinding arbitration and mediation of disputes for the Division of Florida Condominiums, Homeowners' Associations, Timeshares, and Mobile Homes).

#### GEORGIA

Bills Enacted: None.

Bills Pending: None.

#### HAWAII

Bills Enacted: None.

Bills Pending: 2015 HI S.B. 761 (Provides that in cases of determining the fair market value or fair rental value of public land in sale, lease, or repurchase transactions involving the board of land and natural resources, the parties shall proceed by mandatory mediation, unless the tenant opts out of mediation and prefers to proceed directly to arbitration).

#### IDAHO

Bills Enacted: None.

Bills Pending: None.



employee, peace officer, and fire fighter disputes, the arbitration panel shall take the employer's financial ability to fund the proposals based on existing available resources as the primary consideration, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue (currently the interests and welfare of the public and the financial ability of the unit of government to meet those goals). Amends the Illinois Educational Labor Relations Act. With respect to collective bargaining between an educational employer (other than the Chicago school district) and an exclusive representative of its employees, provides that when making wage and benefit determinations during interest arbitration, the employer's financial ability to fund the proposals based on existing available resources shall be given primary consideration, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue").

#### INDIANA

Bills Enacted: 2016 IN S.B. 364 (NS) (State Department must create a work group to mediate survey results before it is finalized regarding Medicaid provider audits).

Bills Pending: None.

#### IOWA

Bills Enacted: None.

Bills Pending: 2015 IA H.S.B. SB511 (NS) (Parties may choose a mediation instead of a contested case hearing relating to institutional health facilities in rural areas).

#### KANSAS

Bills Enacted: 2015 KS S.B. 485 (NS) (Arbitration can be initiated by the signatories of the tribal-state compact regarding cigarette and tobacco sales and taxation); 2015 KS H.B. 2456 (NS) (Interstate commission promulgates rules providing mediation and binding dispute resolution).

Bills Pending: 2015 KS H.B. 2534 (NS) (A dispute resolution process shall be developed for parents when a complaint is filed to local board for a final decision); 2015 KS H.B. 2557 (NS) (Members of the board of directors or property managers cannot bring legal action against a unit owner without first mediating).

#### KENTUCKY

Bills Enacted: None.

Bills Pending: 2016 KY H.B. 344 (NS) (Creates a mediation process prior to malpractice litigation).

LOUISIANA

Bills Enacted: None.

Bills Pending: 2016 LA S.B. 194 (NS) (Creates an enforceable mediation or arbitration process in a trust); 2016 LA S.B. 265 (NS) (Creates an enforceable mediation or arbitration provision for testament); 2016 LA S.B. 451 (NS) (Creates the refusal of enforcement if arbitration award is contrary to law); 2016 LA S.B. 438 (NS) (Creates the Public Employee Partnership Act including arbitration provisions); 2016 LA H.B. 839 (NS) (Creates property insurance mediation program).

MAINE

Bills Enacted: None.

Bills Pending: 2015 ME S.P. 618 (NS) (Creates mandatory mediation prior to the Department of Environmental Protection's adjudication hearing for water management plans); 2015 ME H.P. 1055 (NS) (Mediation procedures are to be created in Foster Parents' disputes through the department for grievances from parents under the Act).

MARYLAND

Bills Enacted: 2016 MD S.B. 390 (NS) (Allows either party in the collective bargaining to seek mediation); 2016 MD H.B. 551 (NS) (If a parent disagrees with a child's individualized education program or special education services provided to the child, the IEP team shall provide explanation regarding mediation and mediation process); 2016 MD H.B. 1016 (NS) (Requires Police Commission to establish a Police Complaint Mediation Program which law enforcement may refer nonviolent complaints towards police officers to. It shall have an independent mediation service).

Bills Pending: 2016 MD S.B. 101 (NS) (For labor disputes, parties can alternate strikes from a list of fact finders from the federal mediation and conciliation service or under the labor arbitration rules of the AAA); 2016 MD S.B. 761 (NS) (Production contracts have mediation resolution sections with requirements); 2016 MD H.B. 27 (NS) (Parties may request mediation if an impasse develops); 2016 MD H.B. 580 (NS) (Mediation shall be the first method to attempt to resolve issues from the commissioner in the case an employee feels an employer has violated the subtitle).

MASSACHUSETTS

Bills Enacted: None.

Bills Pending: 2015 MA S.B. 2419 (NS) (Upon a complaint from the AG, the commission shall assign a member to act as a mediator to oversee the complaint); 2015 MA H.B. 3996 (NS) (Mediation and binding dispute resolution used for disputes in nurse licensure compacts); 2015 MA H.B. 4194 (NS) (Prohibits suit or arbitration to collect consumer debts if limitations period of debt has expired); 2015 MA H.B. 4137 (NS) (The director shall hire an attorney to help serve as a facilitator

for pro se parents so they may learn how to access the bureau's dispute resolution processes).

#### MICHIGAN

Bills Enacted: None.

Bills Pending: 2015 MI H.B. 4476 (NS) (In contested domestic relation actions, courts may order mediation if either party requests mediation; or if a parent protected by an order requests mediation. Mediator shall make reasonable efforts through the domestic relations processes to screen for coercion or violence); 2015 MI H.B. 5655 (NS) (Discusses resolving disputes between co-owner and association of co-owners of condominiums).

#### MINNESOTA

Bills Enacted: None.

Bills Pending: 2015 MN S.F. 1306 (NS) (Extends the Farmer-Lender Mediation Act for two years); 2015 MN S.F. 2832 (NS) (Negotiations between a representative of a public employer and exclusive representative of a labor organization must be open to public – including any labor dispute meeting facilitator); 2015 MN S.F. 2909 (NS) (In no-fault auto insurance claims, a reporting entity must report information on arbitrations to the commissioner); 2015 MN H.F. 2688 (NS) (An arbitration must take place if requested from a discharged/demoted office holder – county auditor, county treasurer, county auditor-treasurer, or county recorder elected at the most recent election for that office prior to a county board resolution to make the office appointed); 2015 MN H.F. 3128 (NS) (There must be an “Intent to Commence a Lawsuit” notice 30 days prior to an arbitration to collect purchased debt); 2015 MN H.F. 3231 (NS) (Establishes a Farmer-Lender Mediation Task Force to provide recommendations to the legislature regarding the state's Farmer-Lender Mediation Act); 2015 MN H.F. 3585 (NS) (Negotiations, mediation, and hearings between public employers and public employees must be public meetings. Additionally, employers must give notice on their web site of public negotiations, mediations, and arbitrations. If the session is deemed closed by the commissioner, there must be notice on the web site with reasoning); 2015 MN H.F. 3594 (NS) (If a retailer and commissioner are unable to agree on method for calculating compensation and the retailer demands arbitration, it must be submitted to binding arbitration); 2015 MN H.F. 3996 (NS) (The parent education program must provide information on litigation and alternative processes including mediation).

#### MISSISSIPPI

Bills Enacted: 2016 MS H.B. 41 (NS) (Entry of MS into the Interstate Medical Licensure Compact, an administrative process that offers voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states).

Bills Pending: None.

MISSOURI

Bills Enacted: 2016 MO S.B. 578 (NS) (Upon order of the court, the general receiver, or any party in interest objecting to the creditor's claim, an objection may be subject to mediation prior to adjudication of the objection. However, state claims are not subject to mediation absent agreement of the state); 2016 MO S.B. 608 (The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate); 2016 MO H.B. 1816 (NS) (If a member state requests, the commission must attempt to resolve disputes with both mediation and binding dispute resolution).

Bills Pending: 2016 MO S.B. 985 (NS) (Nursing licensure compact); 2016 MO H.B. 1718 (NS) (Details the arbitration process between an employer and an at-will employee); 2016 H.B. 2778 (NS) (Court may order mediation to determine who will service as limited guardian or guardian if there is a dispute among proposed guardians); 2016 MO H.B. 2811 (NS) (Describes when patients may request mediation for out-of-network health benefit claims).

MONTANA

Bills Enacted: 2015 MT H.B. 430 (NS) (Included ADR as factor to determine if judicial redistricting is necessary).

Bills Pending: None.

NEBRASKA

Bills Enacted: 2015 NE L.B. 744 (NS) (States that a private adoption may be enforced by civil action if the parties participate in ADR in good faith prior to filing); 2015 NE L.B. 942 (NS) (If non-compete restrictions are found by arbitrator or court to be unreasonable, arbitrator or court shall reform terms).

Bills Pending: 2015 NE L.R. 518 (NS) (Review, comparison, and analysis of parenting plans created by parents, negotiated by attorneys, mediated, and determined by courts).

NEVADA

Bills Enacted: 2015 NV A.B. 295 (NS) (If someone violates wellness services standards, they must go through educational or mediative approach by regulatory body to bring person into compliance); 2015 NV S.B. 168 (NS) (Prevents budgeted ending fund balance of not more than 25% of expenditures from being considered by fact finder or arbitrator to determine ability of local government to pay compensation or benefits); 2015 NV S.B. 442 (NS) (Arbitrators are prohibited from consolidating separate proceedings or other claims and court must remove arbitrators who didn't disclose certain facts); 2015 NV S.B. 512 (NS) (Foreclosure mediation program altered; person initiating foreclosure "need not provide notice of the mediation program").

Bills Pending: None.

## NEW HAMPSHIRE

Bills Enacted: None.

Bills Pending: None.

## NEW JERSEY

Bills Enacted: 2016 NJ A.R. 17 (NS) (Wants New Jersey Supreme Court to amend Rules of Court to require a case be referred to mediation immediately); 2014 NJ S.B. 451 (NS) (Establishing an ombudsman office for the Department of Education Special Education Division to serve as resource to provide info and support regarding special education rights and services.).

Bills Pending: 2016 NJ A.B. 3824 (NS) (Creates ombudsman office to serve as resource for people with intellectual or developmental difficulties; ombudsman shall be skilled in conflict resolution).

## NEW MEXICO

Bills Enacted: None.

Bills Pending: 2016 NM S.B. 60 (NS) (Establishes office of peacebuilding with director who has 80 hours of training in ADR, mediation, dialogue, or restorative justice).

## NEW YORK

Bills Enacted: None.

Bills Pending: 2015 NY A.B. 9241 (NS) (Prevents consumer litigation funding companies from attempting to effect arbitration regarding complaints arising from their transaction); 2015 NY S.B. 7954 (Consumer goods contracts cannot limit the venue in which a claim can be arbitrated); 2015 NY S.B. 1983 (NS) (Social services district must contract with independent entity or staff to mediate disputes); 2015 NY A.B. 1855 (NS) (Creates ombudsman office to provide as a resource to parties involved in residential coops and condo ownership and governance).

## NORTH CAROLINA

Bills Enacted: 2015 NC H.B. 1080 (NS) (For new ASD, existing schools can mediate differences to resolve differences regarding per pupil funding owed).

Bills Pending: None.

## NORTH DAKOTA

Bills Enacted: None.

Bills Pending: None.

OHIO

Bills Enacted: 2015 OH S.B. 242 (NS) (If a franchisor and franchisee have a dispute, they shall resolve through an internal dispute resolution process but can appeal to a court).

Bills Pending: None.

OKLAHOMA

Bills Enacted: 2015 OK H.B. 3220 (NS) (Mandatory court costs to maintain ADR system increased to \$7).

Bills Pending: None.

OREGON

Bills Enacted: None.

Bills Pending: None.

PENNSYLVANIA

Bills Enacted: None.

Bills Pending: PA S.B. 1158 (Provides for dispute resolution procedures for surprise medical billing).

RHODE ISLAND

Bills Enacted: None.

Bills Pending: RI H.B. 7204 (Establishes arbitration for certain condominium disputes); RI H.B. 8004 (Provides for dispute resolution procedures for surprise medical billing).

SOUTH CAROLINA

Bills Enacted: None.

Bills Pending: SC H.B. 4539 (Provides for mandatory mediation in employment discrimination complaints in certain state agencies).

SOUTH DAKOTA

Bills Enacted: SD H.B. 1153 (Allows for resolution of eminent domain disputes by mediation).

Bills Pending: None.

TENNESSEE

Bills Enacted: None.

Bills Pending: TN S.B. 2268 (Relative to arbitration in consumer contracts).

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TEXAS

Bills Enacted: None.

Bills Pending: None.

UTAH

Bills Enacted: UT H.B. 57 (Reenacts the Alternative Dispute Resolution Act through 2026); UT H.B. 251 (Enacts provisions related to restrictive covenants, including the use of arbitration).

Bills Pending: None.

VERMONT

Bills Enacted: VT H.B. 859 (Provisions relating to Special Education, mediation provisions).

Bills Pending: None.

VIRGINIA

Bills Enacted: VA H.B. 641 (Relating to jurisdiction of arbitration).

Bills Pending: None.

WASHINGTON

Bills Enacted: None.

Bills Pending: None.

WEST VIRGINIA

Bills Enacted: None.

Bills Pending: None.

WISCONSIN

Bills Enacted: None.

Bills Pending: None.

WYOMING

Bills Enacted: WY H.B. 55 (Regarding nurse licensing, provides for mediation of disputes).

Bills Pending: None.