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Legislative Update

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LEGISLATIVE UPDATE

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The Legislative Update exists to inform the reader of various state and federal laws passed during the 2021-2022 legislative sessions. More specifically, the statutes discussed below relate to alternative dispute resolution (“ADR”) in its many forms. This is an annual update compiled and written by the *Journal of Dispute Resolution’s* Associate Members and edited by the Associate Editor-in-Chief. This year represented a wide mix of laws passed—some related to health and safety in a post-pandemic world; others posed solutions to problems relevant before the COVID-19 pandemic. Usually, the Legislative Update is limited exclusively to state legislation. We decided to include federal given the substantial impact the bills would have on arbitration and dispute resolution more broadly.^{***}

I. LEGISLATIVE FOCUS SECTION

This section allowed the authors to pick a topic that they see developing in multiple jurisdictions and discuss their implications along with their growth or popularity.

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ADDRESSING MANDATORY MEDIATION IN FAMILY LAW DISPUTES*

Bill Numbers: Hawaii 2022 S.B. 2642 & H.B. 2211

Summary: Establish a statutory exemption from mediation in paternity proceedings where there are allegations of domestic abuse;¹ establish domestic abuse screening procedures that mediators would be mandated to follow before providing court-ordered services;² and amend the exemption from mediation in divorce proceedings by prohibiting courts from mandating mediation when there are allegations of domestic abuse.³

Bill Status: Pending—both bills are currently under advisement by the House Committees on Health, Human Services, & Homelessness, and Judiciary & Hawaiian Affairs.⁴

Bill Number: Maine 2021 S.B. 551

Summary: Also known as the Protection from Abuse Statutes,⁵ establishes statutory protections for victims of domestic abuse,⁶ allows courts to expeditiously enter ex-parte orders addressing parental rights,⁷ and prohibits court-mandated mediation when there are allegations of domestic abuse.⁸

Bill Status: Signed into law on April 20, 2022.⁹

Bill Number: 2022 S.B. 1661 (Tennessee)

Summary: Amends Tennessee Code Annotated, Title 36, Chapter 4, to authorize a court to allow mediation between parties in a divorce or custody proceeding to occur by video conference when appropriate.¹⁰

Bill Status: Signed into law on March 18, 2022.¹¹ Took effect July 1, 2022.¹²

Bill Numbers: Oklahoma 2022 H.B. 3286

Summary: Known as the Homicide Prevention Act, expands the statutory definition of stalking under 21 O.S. 2021 § 1173 to include a

¹ H.B. 2211, 31st Leg., Reg. Sess. (Haw. 2022); S.B. 2642, 31st Leg., Reg. Sess. (Haw. 2022).

² Haw. H.B. 2211; Haw. S.B. 2642.

³ Haw. H.B. 2211; Haw. S.B. 2642.

⁴ Haw. H.B. 2211; Haw. S.B. 2642.

⁵ S.B. 551, 130th Leg., Reg. Sess. (Me. 2022).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ S.B. 1661, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022).

¹¹ *Id.*

¹² *Id.*

broader range of conduct and enhances the penalties that offenders face; expands who qualifies to seek an order of protection, makes it easier to obtain continuous orders where the offender represents an ongoing threat to the victim, and prohibits courts from imposing terms on protective orders that would compromise the victim's safety such as joint counseling or mediation.¹³

Bill Status: Signed into law on May 26, 2022.¹⁴

I. INTRODUCTION

The use of mandatory mediation in family law matters has become increasingly favored by courts as a way to reduce the court's docket, accelerate the rate of case resolution, and increase the likelihood of participant compliance with final agreements.¹⁵ Most states have enacted some form of mandatory mediation, either through statutes or local rules that funnel all family law matters into mediation programs.¹⁶ Mediation—even in contested cases—offers a different way to resolve conflicts that is often cheaper, more flexible, and leads to better long-term outcomes than litigation.¹⁷ Choosing mediation proceedings over a court case can save parties thousands of dollars by eliminating filing fees, service fees, and witness fees.¹⁸ Attorney's fees are often reduced as cases can be settled much quicker than they can in court and individuals are at less risk when appearing *pro se*.¹⁹ Custody battles can take years to be resolved through court proceedings, but mediation can take as little as two weeks.²⁰

Mediation has been championed as an alternative to lengthy court battles in family law cases primarily because of its non-adversarial features.²¹ The non-adversarial nature of mediation can help preserve important social relationships.²² Generally, when individuals fight for custody of a child, they are former partners, relatives, friends, or acquaintances—each of whom presumably play important roles in the child's life.²³ The unseen cost of acrimonious custody battles is the destruction of such relationships, placing enormous stress on the emotional and mental

¹³ Homicide Prevention Act, H.B. 3286, 58th Leg., Reg. Sess. (Okla. 2022).

¹⁴ *Bill Information for H.B. 3286*, OKLA. STATE LEG.,

<http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3286&Session=2200> (last visited July 3, 2022).

¹⁵ Sarah Krieger, *The Dangers of Mediation in Domestic Violence Cases*, 8 CARDOZO WOMEN'S L.J. 235, 235 (2002).

¹⁶ Richard McCutcheon, *Addressing Domestic Violence in Mediation: The Need for More Uniformity and Research*,

HARV. NEGOT. L. REV. ONLINE, https://www.hnlr.org/2021/05/addressing-domestic-violence-in-mediation-the-need-for-more-uniformity-and-research/#_ftn1 (last visited Dec. 23, 2022).

¹⁷ Hon. Sherry Klien Heitler, *Five Benefits of Mediation for Family Law Resolution*, JAMS ADR BLOG (July 13, 2022), <https://www.jdsupra.com/legalnews/5-benefits-of-mediation-for-family-law-2116816/>.

¹⁸ Lee Drizin, *3 Reasons Why You Want to Mediate Guardianship Disputes*, MEDIATE.COM (April 27, 2018),

<https://www.mediate.com/3-reasons-why-you-want-to-mediate-guardianship-disputes/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Krieger, *supra* note 15.

²² Krieger, *supra* note 15.

²³ Drizin, *supra* note 18.

well-being of everyone involved.²⁴ It is usually in the child's best interest that such relationships are maintained, therefore courts often attempt to remove as much of the adversarial nature of the proceedings as possible.²⁵ Mediation typically offers a reprieve from the adversarial setting of most custody disputes.

The use of mediation in family law matters involving domestic abuse, however, has remained controversial.²⁶ The process of mediation assumes that the involved parties are on a somewhat equal playing field, allowing for equal bargaining power.²⁷ But domestic abuse often involves considerable power imbalances and abusers use a variety of tactics to continue exercising power over their victims.²⁸ The stark inequality of bargaining power that exists between a victim and their abuser disturbs²⁹ the main components that often make mediation so successful: the ability for cooperation, *fair* compromise, and agreement.³⁰ Without these components, the core functions of mediation are impaired and vulnerable parties face an increased risk of being unfairly harmed.³¹

II. THE DANGERS OF MANDATING MEDIATION IN CASES WITH DOMESTIC ABUSE

Mandatory mediation has become more popular and more commonplace, leaving victims' advocates, legislators, and the courts struggling to strike a balance that preserves the benefits mediation provides while still protecting and prioritizing victim safety.³² Unfortunately, mandatory mediation in family law disputes often creates scenarios that force victims of domestic abuse into unsafe situations with their abusers.³³ Abusers use a variety of tactics to control and harass their victims.³⁴ For example, an abuser may constantly interrupt others, monopolize a majority of the allotted speaking time, or attempt to use intimidations and insults to win arguments.³⁵ Those tactics can quickly derail a mediation and compromise the integrity of any agreements that are reached. Victims forced into mediation with their abusers often feel pressured to placate their abusers as an act of self-preservation, knowing that zealously advocating for their own desires could put their safety at risk.³⁶ That

²⁴ Drizin, *supra* note 18.

²⁵ Drizin, *supra* note 18.

²⁶ Ann L. Milne, Peter Salem & Kristin Koeffler, *When Domestic Abuse Is an Issue*, 14 FAM. ADVOC. 34, 34 (1992).

²⁷ Krieger, *supra* note 15.

²⁸ Krieger, *supra* note 15, at 237.

²⁹ [Hirsh M. Joshi ed., *Editor's Note*] Unfortunately, I have an illustration for the exact point that Ms. Brooks raised. During my undergraduate years, a friend was sexually assaulted by her then boyfriend and engaged in the Title IX process. Despite being found liable (or whatever term is used), the boyfriend did not get suspended from the University. The ex-girlfriend was asked to suggest a punishment while in front of the ex-boyfriend. She only asked for him to routinely attend therapy and be enrolled at the University. She indicated to me that she only asked for such a nominal punishment because he was sitting right in front of her, and she feared retaliation.

³⁰ Krieger, *supra* note 27, at 237–38; 34 C.F.R. § 106.45(b)(9)(iii) (in the Title IX context, employees accused of sexual assault cannot mediate with a student as the accuser).

³¹ Krieger, *supra* note 27, at 237.

³² McCutcheon, *supra* note 16.

³³ McCutcheon, *supra* note 16, at 2–3.

³⁴ Krieger, *supra* note 15, at 244.

³⁵ Krieger, *supra* note 15, at 244.

³⁶ Krieger, *supra* note 15, at 244.

scenario is further complicated when children are involved.³⁷ Mediators and family court systems tend to push for joint custody, often leaving victims afraid to be labeled an uncooperative—or worse, alienating—parent to inform a court-ordered mediator of their safety concerns with the terms of visitation.³⁸

III. STATES TAKING ACTION

A growing number of states have begun to recognize the danger the aforementioned scenarios present, adopting rules and statutes that provide exceptions to court-ordered mediation when there are signs or allegations of domestic abuse.³⁹ Some states require an actual showing of abuse before a bar on mandatory mediation is imposed, others err on the side of caution and impose a bar on mediation at the first suspicion of abuse.⁴⁰

Recently, four states introduced new legislation extending additional protections to victims of domestic abuse who are facing the potential of mandatory mediation with their abuser, either by providing accommodations aimed to increase safety or by imposing statutory bars that provide a complete exemption to mandatory mediation when there are allegations of domestic abuse.

Hawaii S.B. 2642 & 2211

Hawaii Senate Bill 2642⁴¹ and its companion piece, House Bill 2211,⁴² were introduced in January of 2022, by Senator Rosalyn H. Baker and Representative Linda Ichiyama, respectively. Both bills would establish statutory exemptions from mandatory mediation in custody disputes where there are allegations of domestic abuse.⁴³ They would also establish mandatory domestic abuse screening procedures that mediators must have the parties complete *before* engaging in mediation.⁴⁴ Finally, both bills would amend the exemption from mediation in divorce proceedings by prohibiting courts from mandating mediation when there are allegations of domestic abuse.⁴⁵

Maine S.B. 551

Maine State Senate Bill 551 establishes statutory protections for victims of domestic abuse, allows courts to expeditiously enter ex-parte orders addressing parental rights, and prohibits court-mandated mediation when there are allegations of domestic abuse.⁴⁶ These protections allow victims and their families to quickly obtain ex-parte protection orders that establish enforceable boundaries and determine

³⁷ See Krieger, *supra* note 15.

³⁸ Lydia Belzer, *Domestic Abuse and Divorce Mediation: Suggestions for a Safer Process*, 5 LOY. J. PUB. INT. L. 37, 51 (2003).

³⁹ McCutcheon, *supra* note 16.

⁴⁰ McCutcheon, *supra* note 16.

⁴¹ S.B. 2642, 31st Leg., Reg. Sess. (Haw. 2022).

⁴² H.B. 2211, 31st Leg., Reg. Sess. (Haw. 2022).

⁴³ See Haw. H.B. 2211; *see also* Haw. S.B. 2642.

⁴⁴ See Haw. H.B. 2211; *see also* Haw. S.B. 2642.

⁴⁵ See Haw. H.B. 2211; *see also* Haw. S.B. 2642.

⁴⁶ S.B. 551, 130th Leg., Reg. Sess. (Me. 2022).

temporary custodial rights for any minor children involved.⁴⁷ S.B. 551 enables courts to grant more effective protections against further abuse and ensure that the lives of the victim and their family members remain as stable and secure as possible.⁴⁸

Tennessee S.B. 1661

Tennessee Senate Bill 1661 amends state law to authorize courts to allow mediation between parties in a divorce or custody proceeding to occur by video conference when appropriate.⁴⁹ This law, while not providing an exception from mandatory mediation, provides an extra layer of protection for victims by allowing mediation proceedings to proceed virtually, without the need for victims to be in the same physical space as their abuser. Even when separated in individual caucus room, requiring victims to be in the same location as their abuser presents a host of safety concerns. In addition to the possibility that an uninformed mediator might require the parties to begin the mediation in the same room, having both parties arrive at and leave from the same location offers an opportunity for violent conflicts to occur.⁵⁰

Oklahoma H.B. 3286

Oklahoma House Bill 3286 was passed on May 18, 2022, after one round of amendments and two sub-committee votes.⁵¹ A little over a week later it was signed into law, making Oklahoma the latest state to take action and recognize the ongoing threat that domestic abuse represents.⁵² Titled the Homicide Prevention Act, H.B. 3286 expands the statutory definition of stalking to include a broader range of conduct and enhances the penalties that offenders face.⁵³ The bill also expands who qualifies to seek an order of protection and makes it easier to obtain continuous orders when the offender represents an ongoing threat to the victim.⁵⁴ Similarly to other states, H.B. 3286 prohibits courts from imposing terms on protective orders that would compromise the victim's safety, such as mandatory mediation.⁵⁵

IV. CONCLUSION

Domestic abuse affects individuals of all races, genders, religions, socioeconomic statuses, and ages. It is defined by behaviors meant to establish control and fear, including violence, intimidation, threats, isolation, psychological abuse,

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ S.B. 1661, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022).

⁵⁰ See Ben Benton, *Manchester Doctor Shot, Wife Charged*, TIMES FREE PRESS (Dec. 5, 2013), <https://www.timesfreepress.com/news/local/story/2013/dec/05/manchester-doctor-shot-wife-charged/125827/> (in 2013, a Tennessee man leaving a joint mediation session was shot and killed by his estranged wife, who was upset by the outcome of the session).

⁵¹ *Bill Information for H.B. 3286*, OKLA. LEG., <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3286&Session=2200> (last visited Nov. 19, 2022).

⁵² *Id.*

⁵³ H.B. 3286, 58th Leg., Reg. Sess. (Okla. 2022).

⁵⁴ *Id.*

⁵⁵ *Id.*

financial manipulation, and coercion.⁵⁶ It can vary in frequency and intensity, beginning at any stage of a relationship.⁵⁷ Its cyclical nature makes it hard to detect and harder to escape.⁵⁸ Domestic abuse is designed to strip victims of their independence and force them to submit to their abuser's control.⁵⁹ Mediation is designed to place equal control in the hands of each party.⁶⁰ While mediation offers a wide array of benefits when selected over litigious custody disputes, those benefits are inaccessible when the primary functions of fairness and cooperation are usurped by an uncooperative and abusive party.⁶¹ Legislation exempting victims of domestic abuse from mandatory mediation is an important step that protects both the integrity of mediation and the dignity and safety of survivors.⁶²

**MEDICINE ADDS DAYS TO LIFE, OCCUPATIONAL THERAPY ADDS LIFE
TO DAYS[†] THROUGH ALTERNATIVE DISPUTE RESOLUTION**

Bill Number: Alabama Senate Bill 167

Status: Signed by the Governor of Alabama (R) on March 8, 2022.

Bill Number: Arizona Senate Bill 1468

Status: Signed by the Governor of Arizona (R) on April 6, 2022.

Bill Number: Iowa Senate Fill 463

Status: Signed by the Governor of Iowa (R) on May 24, 2022.

Bill Number: Kentucky House Bill 213

Status: Signed by the Governor of Kentucky (D) on April 8, 2022.

Bill Number: Tennessee Senate Bill 1848

Status: Signed by the Governor of Tennessee (R) on April 25, 2022.

⁵⁶ Krieger, *supra* note 15, at 236–37.

⁵⁷ Krieger, *supra* note 15, at 237.

⁵⁸ Krieger, *supra* note 15, at 237.

⁵⁹ Krieger, *supra* note 15, at 237.

⁶⁰ See McCutcheon, *supra* note 16.

⁶¹ See McCutcheon, *supra* note 16.

⁶² See McCutcheon, *supra* note 16.

Bill Number: Washington Senate Bill 5518

Status: Signed by the Governor of Washington (D) on March 8, 2022.

Bill Number: West Virginia Senate Bill 221

Status: Signed by the Governor of West Virginia (R) on March 8, 2022.

Bill Number: Wisconsin Senate Bill 412

Status: Signed by the Governor of Wisconsin (D) on February 4, 2022.

Bill Number: Wyoming House Bill 117

Status: Signed by the Governor of Wyoming (R) on March 11, 2022.

Summary (all): Creates statutory authority for occupational therapy to facilitate interstate practice that improves public access and continuity of care by enhancing mobility of licensed occupational therapy practitioners. This new section requires disputes between member and nonmember states to be resolved by mediation or binding arbitration.

I. INTRODUCTION

The common expression “cutting of red tape”⁶³ generally refers to a reduction of bureaucratic obstacles to action. A related concept known as “administrative burden” is not to be confused with “red tape.”⁶⁴ Whereas red tape may inherently suggest that regulations do not serve legitimate purposes, “administrative burden” recognizes regulations intended for helpful purposes may nonetheless entail a burden.⁶⁵ “Red tape” is an idiom referring to rules, regulations, and procedures known to be excessive, redundant, or burdensome.⁶⁶ The derisive term is usually applied to

⁶³ *Red tape*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/red%20tape> (last visited Dec. 23, 2022).

⁶⁴ PAMELA HERD & DONALD P. MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 35 (2018).

⁶⁵ *Id.* at 36.

⁶⁶ *Red tape*, U.N. ECON. & SOC. COMM’N FOR W. ASIA, <https://archive.unescwa.org/red-tape> (last visited Dec. 23, 2022).

governments, corporations, and other large institutions.⁶⁷ Things often described as “red tape” include filing paperwork, obtaining licenses, and having a multi-level approval process that makes conducting business slower and more difficult.⁶⁸

In 2008, the European Commission held a conference entitled “Cutting Red Tape for Europe.”⁶⁹ The goal of the conference was “reducing red tape and overbearing bureaucracy,” in order to help “businesspeople and entrepreneurs improve competitiveness.”⁷⁰ In the United States, navigating the various state licensing requirements, rules, regulations, and fee structures can pose significant obstacles for workers, especially occupational therapists.⁷¹ To help roll back the red tape, states have turned to the Occupational Therapy Licensure Interstate Compact.⁷²

A. *The Occupational Therapy Licensure Interstate Compact*

The American Occupational Therapy Association (“AOTA”) ⁷³ along with the National Board of Certification in Occupational Therapy (“NBCOT”) created an interstate professional licensing compact, or a formal agreement among states, to facilitate interstate practice with the goal of improving public access to occupational therapy services.⁷⁴ The Occupational Therapy Licensure Interstate Compact (“OT Compact”) increases public access to occupational therapy and improves continuity of care by addressing licensure issues.⁷⁵ Currently, occupational therapists must obtain licensure⁷⁶ in each state in which he or she wishes to practice.⁷⁷ The OT Compact, however, enhances mobility by allowing “licensed occupational therapists in good standing to practice across state lines (e.g., telehealth) via a ‘compact

⁶⁷ *Id.*

⁶⁸ *What is red tape?*, ECON. TIMES | PANACHE (Dec. 11, 2007), <https://economictimes.indiatimes.com/et-empower/what-is-red-tape/articleshow/2613130.cms>.

⁶⁹ See <https://ec.europa.eu/eurostat/documents/3217494/5717557/KS-BU-08-004-EN.PDF.pdf/c609e15e-f164-41e8-94f9-9f000b31f842?t=1414774947000>

⁷⁰ *Id.*

⁷¹ See generally *Occupational Licensure Policy*, COUNCIL STATE GOV'TS, <https://licensing.csg.org/compacts/#:~:text=Navigating%20the%20various%20state%20licensing,to%20occupational%20licensure%20interstate%20compacts> (last visited Dec. 23, 2022).

⁷² See *Advocacy Issues: Occupational Therapy Licensure Compact*, AM. OCCUPATIONAL THERAPY ASS'N, <https://www.aota.org/advocacy/issues/ot-licensure-compact> (last visited Dec. 23, 2022).

⁷³ Press Release, Am. Occupational Therapy Ass'n, Inc. & Nat'l Bd. for Certification Occupational Therapy, AOTA and NBCOT Announce Collaboration to Support Development of an Interstate Licensure Compact for Occupational Therapy (Sept. 23, 2019) (on file with author) (“Major funding from the NBCOT will support the licensure compact initiative; AOTA and state associations will lead advocacy efforts to enact compact legislation in the states.”).

⁷⁴ *Advocacy Issues*, *supra* note 72 (“This is a multi-year initiative which requires legislation to be passed in each state where the Occupational Therapy compact will apply. The Compact will take effect once enacted by ten states.”).

⁷⁵ *Advocacy Issues*, *supra* note 72.

⁷⁶ *Definition of Occupational Therapy*, ILL. OCCUPATIONAL THERAPY ASS'N, <https://www.ilota.org/what-is-ot> (last visited Dec. 23, 2022) (“Licensure is important because it defines the scope of practice for occupational therapy practitioners and provides guidance to facilities and health care providers on the appropriate application of occupational therapy services.”).

⁷⁷ Press Release, *supra* note 73.

privilege”⁷⁸ which is equivalent to a license.”⁷⁹ As with existing licensure compacts, the OT Compact has no impact on a state’s scope of practice and leaves state specific licensure requirements in place.⁸⁰ The OT Compact strengthens states’ authority to protect the public and regulate the occupational therapy profession by establishing a licensure data system.⁸¹ The data system allows for instantaneous exchange of investigatory, disciplinary, and verification of licensure information between member states.⁸²

Each year, more states are adopting the OT Compact.⁸³ The greater the number of states that participate in the OT Compact, the greater the mobility of occupational therapy practitioners to practice across state lines.⁸⁴ Much like the Uniform Bar Exam (“UBE”), the practitioner receives a portable license that can then be transferred to any state that has enacted the OT Compact agreement.⁸⁵ Both the UBE and OT Compact allow states to retain authority over certain criteria. The OT Compact has no impact on state’s scope of practice and leaves in place state specific licensure requirements, which preserves and strengthens the state licensure system.⁸⁶ As of the writing of this section, twenty-two states have enacted OT Compact legislation with three states currently pending legislation.⁸⁷

II. THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION

The OT Compact legislation passed in each state is uniform. Therefore, the Arizona OT Compact legislation will be used as an example for ease of reading. The legislation begins with the purpose of the bill followed by the necessary

⁷⁸ *Occupational Therapy Licensure Compact*, AM. TELEMEDICINE ASS’N (Mar. 17, 2021), <https://www.americantelemed.org/resources/occupational-therapy-licensure-compact/> (“To be eligible for a compact privilege, an occupational therapist or occupational therapy assistant must hold an active license in his or her home state (which must be a member of the compact) and meet other eligibility criteria, such as having no disciplinary action against his or her license for at least two years.”); S.B. 1468, 55th Leg., 2d Reg. Sess. (Ariz. 2022) (“‘Compact Privilege’ means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.”).

⁷⁹ *Advocacy Issues*, *supra* note 72.

⁸⁰ *Fact Sheet: States and the OT Compact*, OCCUPATIONAL THERAPY LICENSURE COMPACT, https://www.aota.org/-/media/corporate/files/advocacy/final_ot-compact-legislators-fact-sheet_1.pdf (last visited Dec. 23, 2022) (stating that the OT Compact is not a takeover of state regulatory authority or of state licensing systems).

⁸¹ *Advocacy Issues*, *supra* note 72 (stating that the OT Compact Commission establishes and implements the data system in order to begin issuing compact privileges to practice occupational therapy).

⁸² *About*, OCCUPATIONAL THERAPY LICENSURE COMPACT, <https://otcompact.org/about/> (last visited Dec. 23, 2022); *Fact Sheet*, *supra* note 80.

⁸³ *See generally News*, OCCUPATIONAL THERAPY LICENSURE COMPACT, <https://otcompact.org/about/> (last visited Dec. 23, 2022) (highlighting the states that have enacted the compact and when they did so).

⁸⁴ *Occupational Therapy Licensure Compact*, AM. OCCUPATIONAL THERAPY ASS’N, <https://www.aota.org/advocacy/issues/ot-licensure-compact> (last visited Dec. 23, 2022).

⁸⁵ *Id.*

⁸⁶ *See Occupational Therapy Licensure Compact Summary of Key Provisions*, OCCUPATIONAL THERAPY LICENSURE COMPACT, https://www.aota.org/-/media/corporate/files/advocacy/final_ot-compact-section-summary.pdf (last visited Dec. 23, 2022).

⁸⁷ *See Map*, AM. OCCUPATIONAL THERAPY ASS’N, <https://otcompact.org/compact-map/?location=wy> (last visited Dec. 23, 2022).

qualifications of the occupational therapist to exercise the compact privilege.⁸⁸ While the “home state”⁸⁹ retains authority over licensure requirements, the “remote state”⁹⁰ may subject a “licensee”⁹¹ to that state’s regulatory authority.⁹² Any action against an occupational therapist’s license by a remote state is referred to as “adverse action.”⁹³ The OT Compact also “establishes an interstate [occupational therapy] commission [(“Commission”)], composed of member state officials, to carry out the OT Compact’s purpose.”⁹⁴

A. Adverse Action

According to the OT Compact, an adverse action is “any administrative, civil [] or criminal action allowed by a state’s laws that is imposed by [the occupational licensing board] ... against an occupational therapist...”⁹⁵ This pertains to any action taken by the home state or remote state that either limits or suspends an occupational therapist’s ability to practice. The OT Compact provides the option for an occupational therapist to participate in an alternative program in lieu of adverse action.⁹⁶ An alternative program is a non-disciplinary monitoring process approved by an occupational therapy licensing board intended to remediate the licensee.⁹⁷ While participation in an alternative program may be viewed as a secondary rather than the primary or preferred method of settling disputes, it is nonetheless an approach to address a controversy, which is at the heart of alternative dispute resolution (“ADR”). By allowing for an occupational therapist to participate in such a program, the OT Compact allows for the practitioner-patient relationship to be maintained.

B. Interstate Compact Conflicts

On request by a member state, the Commission may attempt to resolve a dispute related to the OT Compact between “member states”⁹⁸ or between member and nonmember states.⁹⁹ The Commission is charged to draft bylaws and promulgate regulations that provide for mediation and binding arbitration.¹⁰⁰ The primary

⁸⁸ See e.g., S.B. 1468, 55th Leg., 2nd Reg. Sess. (Ariz. 2022).

⁸⁹ See e.g., *id.* (“Home State” means the member state that is the licensee’s primary state of residence).

⁹⁰ See e.g., *id.* (“Remote State” means a member state, other than the home state, when a licensee is exercising or seeking to exercise the compact privilege).

⁹¹ See e.g., *id.* (“Licensee” means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant).

⁹² See e.g., *id.* (A remote state may remove a licensee’s compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens).

⁹³ See e.g., *id.* (“Adverse Action” means any administrative, civil, equitable or criminal action allowed by a state’s law that is imposed by a licensing board or other authority against an occupational therapist or occupational therapist assistant, including actions against an individual’s license or compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee or restriction on the licensee’s practice).

⁹⁴ *About, supra* note 82.

⁹⁵ See e.g., S.B. 1468, 55th Leg., 2nd Reg. Sess. (Ariz. 2022).

⁹⁶ See e.g., *id.*

⁹⁷ See e.g., *id.*

⁹⁸ See e.g., *id.* (“Member State” means a state that has enacted the compact).

⁹⁹ See e.g., *id.*

¹⁰⁰ See e.g., *id.*

purpose of the OT Compact is to improve public access to occupational therapy services and the continuity of care.¹⁰¹ Allowing the member states in conflict to resolve disputes through ADR keeps the goal of helping individuals in focus.

III. CONCLUSION

Why is it so difficult to find a practitioner? Begin with your insurance company's list of in-network providers, then work through the multiple steps to choose the "best" practitioner for you, only to later hope he or she is still accepting new patients. No wonder 89 percent of Americans highly value long-term relationships with practitioners, and for good reason.¹⁰²

Research has shown better practitioner-patient relationships positively impact health outcomes.¹⁰³ The role "red tape" plays in health care is well-known. Providers have long complained about the hassle of submitting paperwork to get approval to provide care to patients, especially those that cross state lines.¹⁰⁴ But some states have rolled back the red tape to increase access to occupational therapy and improve continuity of care.

The ability to provide adaptable care while managing conflict in a way that does not adversely affect the practitioner-patient relationship is important. With so much at risk, the benefits put forward by the OT Compact are not to be ignored. Arizona, Iowa, and Tennessee are examples of states that have taken recent steps taken to remove obstacles for practitioners and patients by providing ADR. Most states have long implemented some aspect of ADR, but recent attempts to cement its place, supplement its impact, and fill in the gaps of spotty legislation have only benefitted the practitioner-client relationship.¹⁰⁵

HOUSING MEDIATION^{††}

Bill Number: 2022 Washington H.B. 2088

Summary: Amends the foreclosure mediation program relating to the availability of mediation and the timeline for borrowers to take advantage of mediation services.

¹⁰¹ *About, supra* note 82.

¹⁰² Joanne Finnegan, *89% of Americans Value Their Relationships with Their Primary Care Doctors*, FIERCE HEALTHCARE (May 24, 2017), <https://www.fiercehealthcare.com/practices/89-americans-value-relationship-primary-care-doctor#:~:text=89%25%20of%20Americans%20value%20their%20relationships%20with%20primary%20care%20doctors,-By%20Joanne%20Finnegan> (referencing American Academy of Family Physicians' poll).

¹⁰³ Tyler Johnson, *The Importance of Physician-Patient Relationships Communication and Trust in Health Care*, DUKE CTR. FOR PERSONALIZED HEALTH CARE (Mar. 11, 2019), <https://dukepersonalizedhealth.org/2019/03/the-importance-of-physician-patient-relationships-communication-and-trust-in-health-care/>.

¹⁰⁴ Alexandra Ellerbeck, *The Health 202: Texas is cutting red tape for doctors and patients*, WASH. POST (Jul. 26, 2021, 8:03 AM), <https://www.washingtonpost.com/politics/2021/07/26/health-202-texas-is-cutting-red-tape-doctors-patients/>.

¹⁰⁵ *Map, supra* note 87.

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Status: Introduced on January 25, 2022, and referred to the Committee on Civil Rights & Judiciary.

Bill Number: 2021 Washington H.B. 1228

Summary: Requires the administrative office to create an eviction resolution pilot program to facilitate resolution of non-payment eviction between landlord and tenant through dispute resolution before the landlord files suit.

Status: Re-introduced on January 10, 2022, and referred to the House Committee on Housing, Human Services, and Veterans.

Bill Number: 2021 Massachusetts House Bill 2143

Summary: Establishes pre-foreclosure mediation authorized by municipalities.

Status: In the Committee on Municipalities and Regional Government.

Bill Number: 2021 Minnesota H.F. 3287

Summary: Establishes and appropriates funds for a stable housing mediation program.

Status: In the Committee on Ways and Means.

I. INTRODUCTION

Over the past fifteen years, the United States has experienced multiple recessions and severe fluctuation in the housing market that has created a nearly untenable situation for tenants and landlords, mortgagees and mortgagors alike.¹⁰⁶ Evictions in particular have been on the rise since the beginning of the COVID-19 pandemic and while temporary eviction moratoriums helped temporarily stabilize many housing situations, the issues that originally brought about the eviction

¹⁰⁶ See *Chart Book: Tracking the Post-Great Recession Economy*, CTR. BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/economy/tracking-the-post-great-recession-economy> (May 27, 2022); Jared Bernstein et al., *Housing Prices and Inflation*, WHITE HOUSE (Sept. 9, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/09/09/housing-prices-and-inflation/>; Natalie Campisi, "Housing Market Predictions 2022: When Will Prices Drop?", FORBES ADVISOR, <https://www.forbes.com/advisor/mortgages/real-estate/housing-market-predictions/> (July 29, 2022).

moratorium still exist today.¹⁰⁷ General economic downturn, an overvalued housing market, inflation, and a global pandemic have created a perfect storm for all parties involved in residential properties.¹⁰⁸

The current economic issues have brought to light concerns with foreclosure and eviction proceedings—specifically, that they move too quickly and provide little room to consider alternative solutions that may better suit both parties in the event of defaulted payments.¹⁰⁹ Due to its limited resources and structure, the court is not suited to address each individual case and help the parties find an alternative to eviction that can satisfy both parties and prevent potential financial crisis.¹¹⁰ Alternative dispute resolution is more suited for this hands-on approach, where parties can take the time to sort out solutions before resorting to an action that is not ideal for any party involved.¹¹¹

II. THE VALUE OF MEDIATION FOR FORECLOSURE AND EVICTION PROCEEDINGS

Especially in times of economic recession, renters and mortgagees benefit from mediation proceedings prior to eviction proceedings.¹¹² Requiring landlords and mortgagors to engage in mediation at the renter's or mortgagee's request helps lessen the power imbalance between the two parties and provides the latter with another chance to avoid losing their home even when they have defaulted on payments.¹¹³ Avoiding eviction can be in the landlord's or mortgagor's financial

¹⁰⁷ See *National Moratorium*, NAT'L LOW INCOME HOUS. COAL., <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium> (last visited Dec. 23, 2022); *Federal Moratorium on Evictions for Nonpayment of Rent*, NAT'L HOUS. L. PROJECT (Aug. 2021) <https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf>; *Eviction Tracking*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/> (Aug. 6, 2022); Jennifer Ludden, "We have nowhere to go": Many face eviction during a crisis in affordable housing, NPR (Aug. 9, 2022), <https://www.npr.org/2022/08/09/1112895439/eviction-affordable-housing>.

¹⁰⁸ See John V. Duca & Anthony Murphy, *Why House Prices Surged as the COVID-19 Pandemic Took Hold*, FED. RESERVE BANK DALL. (Dec. 28, 2021), [https://www.npr.org/2022/05/24/1101040107/high-inflation-is-taking-a-toll-on-energy-and-housing-markets](https://www.dallasfed.org/research/economics/2021/1228.aspx#:~:text=In%20the%20wake%20of%20the,July%202021%20(Chart%201); Scott Horsley et al., <i>High inflation is taking a toll on energy and housing markets</i>, NPR (May 24, 2022), <a href=); See, e.g., Paul Owers, *Study: 15 Housing Markets Overvalued by More Than 50 Percent*, FL. ATLANTIC UNI. COLL. BUS. (May 31, 2022), <https://business.fau.edu/newsroom/press-releases/2022/housing-overvalued-more-than-50-percent.php>.

¹⁰⁹ Deborah Thomson Eisenberg & Noam Ebner, *Disrupting the Eviction Crisis with Conflict Resolution Strategies*, 41 MITCHELL HAMLIN L.J. PUB. POL'Y & PRACT. 125, 127 (2020); see generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 296 (2016).

¹¹⁰ Even if the court had more resources, it would struggle to keep up with the number of evictions that occur every day, see *Eviction Tracking*, *supra* note 107 (there were 8,419 evictions in the first week of August 2022 across only 31 cities and there have been over 1,100,000 evictions across 31 cities since March 2020 as of the time of this writing). After the eviction moratorium ended, the number of evictions was overwhelming, see *U.S. faces 'avalanche of evictions' as rent protections expire*, ASPEN INST. (Nov. 30, 2020), <https://www.aspeninstitute.org/of-interest/us-faces-avalanche-of-evictions-as-rent-protections-expire/>.

¹¹¹ See Deborah Thompson Eisenberg et al., *The Roles of Mediation in an Integrated System of Eviction Prevention*, 2 MD. BAR J. 112, 114 (2020); Karen Tokarz et al., *Addressing the Eviction Crisis and Housing Instability Through Mediation*, 63 WASH. U. J.L. & POL'Y 243, 244, 246 (2020).

¹¹² Eisenberg & Ebner, *supra* note 109.

¹¹³ Rebecca Hare, *Mitigating Power Imbalance in Eviction Mediation: A Model for Minnesota*, 38 LAW & INEQ. 135, 162 (2020).

interest in many cases, as it helps them avoid costly fees related to eviction and resale.¹¹⁴ Mediation is a preferable alternative to a lawsuit, as it is significantly less costly to both parties and is more suited to deescalate the high emotions that commonly occur when a person is about to lose his or her home.¹¹⁵ This year, state legislatures have focused on housing stability by creating bills that aim to prevent the foreclosure of mortgagee's homes and eviction of tenants.¹¹⁶

III. THE STATES

Many states have implemented mediation into eviction and foreclosure proceedings.¹¹⁷ During the height of the COVID-19 pandemic, the increasing issue of housing insecurity gained public interest and, as a result, many state legislatures opted to update their approaches to eviction and foreclosure to be more renter and mortgagee-friendly in the midst of an economic crisis.¹¹⁸ However, the various states differ in their approach to aiding those facing eviction.

Washington

Both of Washington's bills, H.B. 2088 and H.B. 1228, work to resolve payment disputes in housing situation without lawsuits and without eviction.¹¹⁹ H.B. 2088 amends RCW 61.24.008 and 61.24.163 by changing the timeline of when a borrower may be referred to mediation in the borrower's favor.¹²⁰ After a notice of default has been issued, current Washington law gives borrowers twenty days from the date the notice of sale is recorded to be referred to mediation.¹²¹ By contrast, H.B. 2088 proposes that borrowers may be referred to mediation up to ninety days prior to the date of sale listed in the notice.¹²² Thus, H.B. 2088 centers the borrower's timeline around when notice was published rather than the actual date of

¹¹⁴ Taylor Marley, *How much does it cost to evict someone?*, TURBOTENANT, (Mar. 1, 2022) <https://www.turbotenant.com/blog/eviction-costs/>.

¹¹⁵ Brian Bieretz et al., *Getting Landlords and Tenants to Talk*, URBAN INST. (Apr. 2020), https://www.urban.org/sites/default/files/publication/101991/getting-landlords-and-tenants-to-talk_3.pdf.

¹¹⁶ See *infra* Part III.

¹¹⁷ Mark Treskon et al., *Eviction Prevention and Diversion Programs: Early Lessons from the Pandemic*, URBAN INST. (Apr. 2021) https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic_0.pdf; *Court ADR Across the U.S.*, RESOL. SYS. INST. (2022) <https://www.abourtsi.org/acrossus> (the following states have some form of ADR eviction program in some portion of the state: California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Washington, Wisconsin, Virginia, and Vermont).

¹¹⁸ H.B. 1228, 67th Leg., Reg. Sess. (Wash. 2021) ("This legislature finds that the COVID-19 pandemic is causing sustained economic downturn throughout Washington state...forcing many residents to suffer economic hardship while working in order to remain in their residences for extended period of time. The inability to pay basic household expenses, including rent is restricting housing providers' ability to maintain the costs of operating residences and damaging property owners' ability to secure financing, threatening the future viability of rental housing opportunities across Washington state.")

¹¹⁹ H.B. 2088, 67th Leg., Reg. Sess. (Wash. 2022); *id.*

¹²⁰ H.B. 2088; WASH. REV. CODE § 61.24.008 (2012).

¹²¹ § 61.24.008.

¹²² Wash. H.B. 2088.

sale.¹²³ The change generally provides borrowers with more time to be referred to mediation while also benefitting those who may not have received notice of the sale during the service process.¹²⁴ The sale itself may not occur less than one hundred and fifty days after notice of sale, thus providing the borrower at least sixty days after recorded notice to be referred rather than merely thirty days.¹²⁵ This additional time could be crucial to ensuring that borrowers, whom mediation is intended to benefit, have sufficient time to do so.

H.B. 1228 seeks to benefit tenants who similarly have gone into default on payments.¹²⁶ The bill requires landlords to give the defaulting tenant and the Office of Civil Legal Aid notice about an early resolution program option and provide the tenant two weeks to respond to the notice before filing suit for unlawful detainer.¹²⁷ The example notice, which landlords must substantially follow, makes the fourteen day deadline clear and provides instructions on how to take advantage of the early resolution program.¹²⁸

Massachusetts

Massachusetts House Bill 2143 would add a subsection to the section of Massachusetts' chapter on foreclosure and redemption of mortgages regarding opening foreclosure and the right of redemption.¹²⁹ House Bill 2143 requires municipalities to establish foreclosure mediation programs and implement them.¹³⁰ The foreclosure mediation program seeks to benefit mortgagees who have sent notice of the right to cure residential property and must provide mediation prior to all such foreclosures.¹³¹ The bill seeks to help mortgagors and mortgagees of residential property in which the mortgagee resides to avoid foreclosure by agreeing upon a "commercially reasonable alternative."¹³² The Massachusetts bill is unique in seeking to delegate the authority of establishing and maintaining the mediation program to individual municipalities rather than the state government.¹³³

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Wash. H.B. 1228.

¹²⁹ H.B. 2143, 192nd Gen. Ct., Gen. Session (Mass. 2021).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* The idea of local governments establishing housing mediation programs is not itself unique; municipalities in other states, generally counties, have established housing mediation programs, *see, e.g.*, Eviction Mediation Across the Country, *supra* note 117 (The following states have local county programs: (1) Florida—Broward County, Pinellas County, Miami-Dade County, (2) Georgia—Chatham County, (3) Idaho—Canyon County, (4) Illinois—Rock Island County, Kane County, Kankakee and Winnebago Counties, Cook County, (5) Michigan—Jackson County, (6) Minnesota—Ramsey County, (7) Missouri—St. Louis County, (8) Washington—Clark County, King County, Pierce County, Snohomish County, Skagit County, Spokane County Thurston County.). However, the state legislature authorizing and funding the optional implementation of housing mediation in counties across the state is unique, *see id.*

Minnesota

Minnesota House Bill 3287 establishes a housing mediation grant program to assist renters' and homeowners' access to mediation services should they wish to utilize them.¹³⁴ The grant program aims to provide additional funding to state-certified mediation facilities and would be overseen by the commissioner of the Housing Finance Agency.¹³⁵ By increasing access to housing mediation, the bill aims to reduce housing-related lawsuits, other court intervention, prevent evictions, and provide stability to housing in Minnesota, especially to seniors, minorities, and disabled individuals.¹³⁶ The bill appropriates \$425,000 of the 2023 general fund for the implementation of this program.¹³⁷

IV. COMPARISON

The legislatures of Washington, Massachusetts, and Minnesota demonstrate an intent to improve the current foreclosure and eviction procedures in their states but go about doing so in different ways. Washington, which already implements ADR in foreclosure and eviction proceedings, is attempting to update these provisions to provide tenants with ample notice of their rights and to provide both tenants and mortgagees ample opportunity to request ADR services before eviction proceedings or foreclosure sales occur.¹³⁸ Massachusetts' bill seeks to provide ADR services through the authorization and under the instruction and direction of municipalities rather than the state.¹³⁹ The Minnesota legislature wants to bring additional funds to state-certified ADR services to provide state residents, especially senior citizens, minorities, and disabled residents, greater opportunity and access to those services.¹⁴⁰ Each of these state legislatures are taking steps to increase the availability of housing mediation to state residents. These efforts, while they may appear small, constitute a necessary step in helping decrease eviction and foreclosure proceedings, which in turn helps unburden the courts and increase stability in housing.

V. CONCLUSION

Eviction and foreclosure proceedings are inherently tumultuous and emotional for litigants on either side and are generally not well-suited to the rigidity of litigation.¹⁴¹ By contrast, ADR proceedings can provide an outlet for parties to address their concerns, expectations, and feelings while helping them work toward an individualized, mutually agreeable solution.¹⁴² As the COVID-19 pandemic and the intense seller's market for housing have brought housing disputes to the forefront of legislator's minds, states like Washington, Massachusetts, and Minnesota have

¹³⁴ H.R. 3287, 92nd Leg., Reg. Sess. (Minn. 2022).

¹³⁵ *Id.*

¹³⁶ *Id.* at § 1.

¹³⁷ *Id.* at § 2.

¹³⁸ H.B. 2088, 67th Leg., Reg. Sess. (Wash. 2022); H.B. 1228, 67th Leg., Reg. Sess. (Wash. 2022).

¹³⁹ H.B. 2143, 192nd Gen. Ct., Gen. Session (Mass. 2021).

¹⁴⁰ H.B. 3287, 92nd Leg., 2nd Reg. Sess. (Minn. 2022).

¹⁴¹ Tokarz et al., *supra* note 111.

¹⁴² Tokarz et al., *supra* note 111.

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taken steps to alleviate some of the tensions brought on by housing instability issues and foster better outcomes for tenants and landlords, mortgagors and mortgagees. They have done this by increasing reliance on ADR services, so parties attempt settlement before going into costly and adversarial court proceedings.

PROTECTING THE CHOICE OF VENUE^{††}

Bill Number: H.R. 4445

Bill Status: Became Public Law No: 117–90 on 3/3/22.¹⁴³

Bill Number: H.R. 963

Bill Status: Referred to the Committee on the Judiciary on 3/21/22.¹⁴⁴

Bill Number: Alabama H.B. 1

Bill Status: Referred to the House of Representatives committee on Judiciary on 1/11/22.¹⁴⁵

Bill Number: California 2022 H.B. 1241

Bill Status: Filed with the Chief Clerk pursuant to Joint Rule 56 on 2/1/22.¹⁴⁶

Bill Number: Connecticut 2022 S.B. 5

Bill Status: Signed by the Governor on 5/24/22.¹⁴⁷

Bill Number: Oregon S.B. 1586

¹⁴³ *Bills Signed: H.R. 4445*, WHITE HOUSE (Mar. 3, 2022), <https://www.whitehouse.gov/briefing-room/legislation/2022/03/03/bills-signed-h-r-4445/>.

¹⁴⁴ Forced Arbitration Injustice Repeal Act of 2022, H.R. 963, 117th Cong. (2022).

¹⁴⁵ *Alabama House Bill 1*, LEGISCAN, <https://legiscan.com/AL/bill/HB1/2022> (last visited Dec. 26, 2022).

¹⁴⁶ *California Assembly Bill 1241*, LEGISCAN, <https://legiscan.com/CA/bill/AB1241/2021> (last visited Dec. 26, 2022).

¹⁴⁷ *Connecticut Senate Bill 5*, LEGISCAN, <https://legiscan.com/CT/bill/SB00005/2022> (last visited Dec. 26, 2022).

Bill Status: Signed by the Governor on 3/24/22.¹⁴⁸

I. INTRODUCTION

Alternative dispute resolution refers to the different ways parties often resolve disputes outside the trial setting.¹⁴⁹ ADR comes in many forms—with arbitration and mediation being among the most common¹⁵⁰—with the essential goal being to avoid the expense, delay, and uncertainty often associated with traditional litigation.¹⁵¹ While these goals are often satisfied through the arbitration and mediation process, these alternatives also have many drawbacks.¹⁵²

Some contracts require that disputes between parties are resolved through arbitration. They often show up in instances where employees attempt to sue their employer. Many arbitration clauses work in favor of a large employer or manufacturer when an employee or merchant with shallow pockets and less power challenges an employer's arbitration agreement. These employers and manufacturers are often “repeat players,” meaning they undergo the arbitration process frequently. Repeat players often have more information, experience, and influence on arbitrators simply because they have been here before. Often, the arbitrator wants to rule in the employer's favor to potentially be selected for future arbitrations.¹⁵³ In addition, the lack of transparency and court oversight in the arbitration setting makes the process more likely to be biased or tainted in some way, leaving parties with no alternative recourse.¹⁵⁴ Moreover, the lack of transparency allows repeat players to continue to hide behind arbitration and commit the same unlawful acts without any public accountability.

In response to the drawbacks often exhibited in these matters, we have seen exciting legislation passed and pending regarding the future of arbitration and mediation in certain civil rights cases. On the federal level, we have seen a push toward amending Title 9 of the United States Code regarding forced arbitration of sexual assault and sexual harassment disputes and a further push to expand that amendment to include employment, consumer, antitrust, and other civil rights disputes. These amendments aim both to prohibit employers and manufacturers from enforcing these binding forced arbitration agreements and give employees and consumers a choice in how they want to resolve their disputes.¹⁵⁵

¹⁴⁸ *Oregon Senate Bill 1586*, LEGISCAN, <https://legiscan.com/OR/bill/SB1586/2022> (last visited Dec. 26, 2022).

¹⁴⁹ *Alternative Dispute Resolution*, U.S. DEP'T LAB., <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=The%20term%20alternative%20dispute%20resolution,reaching%20agreement%20and%20avoiding%20litigation> (last visited Dec. 26, 2022).

¹⁵⁰ *Alternative Dispute Resolution*, CORNELL U.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/alternative_dispute_resolution (last visited Dec. 26, 2022).

¹⁵¹ *Id.*

¹⁵² Barbra Kate Repa, *Arbitration Pros and Cons*, NOLO, <https://www.nolo.com/legal-encyclopedia/arbitration-pros-cons-29807.html> (last visited Dec. 26, 2022).

¹⁵³ Alexander Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*, 8 J. EMPIRICAL LEGAL STUD. 1, 12 (2011).

¹⁵⁴ Scott Medintz, *Forced Arbitration: A Clause for Concern*, CONSUMER REPS. (Jan. 30, 2020), <https://www.consumerreports.org/mandatory-binding-arbitration/forced-arbitration-clause-for-concern/>.

¹⁵⁵ See Hirsh M. Joshi, Comment, *You Have Got to be Keating Me: Why the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act is a Good Start*, J. DISP. RESOL. (2023).

As the Federal level appears to be turning away from binding forced arbitration agreements, the state level seems geared towards making voluntary mediation more available in certain civil rights disputes—the key word being voluntary. We are seeing a trend toward placing the power back into the hands of the parties to choose how they wish to resolve their disputes. Whether it be arbitration, mediation, or a courtroom, it is clear that the legislature believes that choice should be up to the parties.

II. THE BILLS

A. Federal

H.R. 4445: the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 “EFASASHA”

President Biden signed H.R. 4445, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the Act), into law on March 3, 2022.¹⁵⁶ EFASASHA was initially introduced in the House on June 16, 2021, by Representative Cheri Bustos (D-IL).¹⁵⁷ The Act was referred to the House Committee on the Judiciary the same day.¹⁵⁸ The Act passed through Congress in February 2022 and signed into law thereafter.¹⁵⁹ EFASASHA received extensive bipartisan support, as it passed in the House 335 to 97.¹⁶⁰ The Act amends Title 9 of the United States Code to invalidate arbitration agreements that preclude a party from filing a lawsuit in court involving sexual assault or sexual harassment.¹⁶¹ EFASASHA essentially carves out cases involving sexual misconduct from the Federal Arbitration Act (FAA), which was enacted in 1925.¹⁶²

The Act will prohibit individuals from forcing the arbitration of sexual harassment and sexual assault disputes based on a previous agreement or waiver. While EFASASHA will apply to all future agreements to arbitrate such claims,¹⁶³ the amendment will only apply to claims or disputes that accrue on or after March 3, 2022.¹⁶⁴ However, some litigants are arguing that it has retroactive effect since it’s procedural rather than substantive.¹⁶⁵ This Act does not completely bar a claimant

¹⁵⁶ *Bills Signed: R.R. 4445*, WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/legislation/2022/03/03/bills-signed-h-r-4445/> (last visited Dec. 26, 2022).

¹⁵⁷ *H.R. 4445 - Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/4445/actions> (last visited Dec. 26, 2022).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 9 U.S.C § 402 (2021).

¹⁶³ *Id.*

¹⁶⁴ Nancy Barnes & Todd M. Seaman, *New Federal Law Restricts Enforcement of Arbitration Agreements for Sexual Assault and Sexual Harassment Claims*, THOMPSON HINE (Mar. 22, 2022), <https://www.thompsonhine.com/publications/new-federal-law-restricts-enforcement-of-sexual-assault-harassment-claim-arbitration-agreements>.

¹⁶⁵ *Tantaras v. Fox News Network*, 12 F.4th 135, 139 (2d Cir. 2021).

from arbitrating their claims.¹⁶⁶ Rather it bars employers from compelling arbitration of such claims.¹⁶⁷

Given the lack of transparency in most arbitration proceedings, many victims of sexual abuse and harassment feared that their voice would not be heard or that their harasser or abuser would face no accountability. In many employment arbitration settings, the employer has the upper hand because they are often a “repeat-player,”¹⁶⁸ whereas this process is often intimidating for many victims. EFASASHA finally gives rape, sexual assault, and sexual harassment survivors the right to hold their abusers accountable in court if they choose to. They will no longer be forced into a rigged, secretive process of forced arbitration. This system operates outside the bounds of enforceable law and allows sexual assault and sexual harassment victims to be kept out of a public forum in which they may vindicate their rights.¹⁶⁹

H.R. 963: Forced Arbitration Injustice Repeal Act “FAIR Act”

House Bill 963, also known as the FAIR Act, expands the recent “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act.”¹⁷⁰ The purpose of H.R. 963 is to prohibit pre-dispute arbitration agreements from being enforced in employment, consumer, antitrust, or civil rights disputes.¹⁷¹ The bill was introduced by Congressman Henry C. Johnson Jr. (D-GA) on February 11, 2021,¹⁷² with only one Republican sponsor.¹⁷³ It was reported and amended by the Committee on Judiciary on March 11, 2022.¹⁷⁴ The bill quickly advanced through the U.S. House of Representatives on March 17, 2022,¹⁷⁵ with an overall vote of 222-209.¹⁷⁶ The bill is currently pending in the Senate as of March 21, 2022.¹⁷⁷

As a broader amendment to the FAA, this bill ensures that individuals, workers, and consumers will be entitled to resolve their disputes outside of arbitration.¹⁷⁸ Similar to H.R. 4445, the FAIR Act would not prohibit voluntary arbitration agreements after a dispute arises.¹⁷⁹ The bill requires agreements to arbitrate disputes be

¹⁶⁶ Amanda Collins et al., *Congress Bars Arbitration of Sexual Assault and Harassment Claims*, JD SUPRA (Feb. 17, 2022), <https://www.jdsupra.com/legalnews/congress-bars-arbitration-of-sexual-9707553/>.

¹⁶⁷ *Id.*

¹⁶⁸ Thomas Crane, *Arbitration Favors the Repeat Player*, SAN ANTONIO EMP. L. BLOG (Apr. 6, 2016), <https://www.sanantonioemploymentlawblog.com/2016/04/articles/contracts/arbitration-favors-the-repeat-player/>.

¹⁶⁹ *Id.*

¹⁷⁰ Robert Gilmore & Hannah Kraus, *FAIR Act: U.S. House Passes Bill Eliminating Mandatory Arbitration Agreements*, JD SUPRA (Mar. 23, 2022), <https://www.jdsupra.com/legalnews/fair-act-u-s-house-passes-bill-5292972/#:~:text=The%20FAIR%20Act%20is%20an,President%20Biden%20earlier%20this%20month.>

¹⁷¹ *Id.*

¹⁷² Forced Arbitration Injustice Repeal Act of 2022, H.R. 963, 117th Cong. (2022).

¹⁷³ *H.R. 963: FAIR Act of 2022*, GovTRACK.US, <https://www.govtrack.us/congress/bills/117/hr963> (last visited Dec. 26, 2022).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*; see also Joshi, *supra* note 155.

¹⁷⁷ *H.R. 963: FAIR Act of 2022*, *supra* note 173.

¹⁷⁸ Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 9 U.S.C. § 402 (2021).

¹⁷⁹ Forced Arbitration Injustice Repeal Act of 2022, H.R. 963, 117th Cong. § 5 (2022).

made after the dispute has arisen rather than before.¹⁸⁰ By eliminating forced arbitration, this bill insists that individuals have a meaningful choice when deciding how to resolve their disputes. Section 402 of the bill includes the prohibition of pre-dispute arbitration agreements in consumer, antitrust, and civil rights disputes while excluding collective bargaining.¹⁸¹

This bill will reassert individuals' right to access the court system. Many contracts today include forced arbitration clauses, requiring certain individuals into a predetermined dispute resolution.¹⁸² The bill will limit the power many large corporations hold over the men and women contracting with these entities by ensuring that they are not forced into private arbitration, where the more experienced party often has the advantage of choosing the arbitrator in an unappealable decision.¹⁸³ Often, individuals are signing their rights away in standard, adhesive contracts that force them to arbitrate their disputes and subject them to a resolution process that lacks the procedural safeguards of our justice system.¹⁸⁴ This bill provides these individuals with the option to pursue their claims however they see fit.¹⁸⁵

B. States

Alabama: 2022 H.B. 1

Alabama House Bill 1, also known as The Pregnant Workers Fairness Act, was introduced on January 11, 2022.¹⁸⁶ H.B. 1 was introduced by Representative Neil Rafferty (D).¹⁸⁷ On the day it was introduced, the bill was subsequently referred to the House of Representatives committee on Judiciary,¹⁸⁸ where it is still pending.¹⁸⁹ The Pregnant Workers Fairness Act aims to implement workplace protection against discrimination and related medical conditions for pregnant women.¹⁹⁰

Section 25-2-7(c) of the act grants the Secretary of Labor the power and authority to carry out the functions and duties of the Department of Labor,¹⁹¹ including investigating labor disputes.¹⁹² Should there be any labor disputes, the Governor must appoint a board of mediation as established by § 25-7-4 of the act.¹⁹³ The act then requires that the secretary make all relevant information and data available to the board of mediation regarding the dispute.¹⁹⁴ This act gives pregnant workers an

¹⁸⁰ *Id.*

¹⁸¹ U.S.C. § 402.

¹⁸² *Id.*

¹⁸³ *Support H.R. 963, the Forced Arbitration Injustice Repeal (FAIR) Act*, LEADERSHIP CONF. CIVIL & HUM. RTS. (July, 31, 2022), <https://civilrights.org/resource/support-h-r-963-the-forced-arbitration-injustice-repeal-fair-act/>.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Alabama House Bill 1*, LEGISCAN, <https://legiscan.com/AL/bill/HB1/2022> (last visited Dec. 26, 2022).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Alabama House Bill 1*, LEGISCAN, <https://legiscan.com/AL/bill/HB1/2022> (last visited Dec. 26, 2022).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

alternative way to resolve their disputes regarding any labor discrimination they may have experienced because of their condition.¹⁹⁵

California: 2022 H.B. 1241

H.B. 1241 was introduced in the assembly on February 19, 2021, and read for the first time on February 22, 2021.¹⁹⁶ H.B. 1241 was introduced by Democratic assembly member Reginald Byron Jones-Sawyer, Sr.¹⁹⁷ After several rounds of amendments and re-referrals to the Commission on Housing and C.D., the bill was inevitably suspended on January 6, 2022.¹⁹⁸ H.B. 1241 has since been re-filed with the Chief Clerk and is currently still pending its first hearing.¹⁹⁹ The purpose of this bill is to amend sections and add sections of the California Government Code relating to rental housing.²⁰⁰ The bill's primary goal is to prevent and eliminate discriminatory housing practices in rental applications.²⁰¹

This bill will prohibit rental property owners from inquiring about, or requiring an applicant to disclose, a criminal record during the initial application process.²⁰² Once the initial application process is complete, however, the owner is permitted to inquire into the applicant's criminal background.²⁰³ H.B. 1241 requires the Department of Fair Employment and Housing to investigate any violations and provide mediation services to resolve the dispute.²⁰⁴

The Joint Committee on Judiciary introduced S.B. 5 on February 9, 2022.²⁰⁵ This bill moved through the Senate for several months, undergoing many amendments. This bill was largely favored by Democrats, with only six Republican co-sponsors.²⁰⁶ S.B. 5 was ultimately signed and passed by Governor Ned Lamont (D) on May 24, 2022,²⁰⁷ and became law.²⁰⁸ S.B. 5 aims to establish provisions to support the victims of family or domestic violence.²⁰⁹ The bill has six main goals: (1) Establish verification requirements of online dating accounts, (2) establish the crime of child grooming, (3) create a grant program to prevent online abuse, (4) require domestic violence training for state employees, (5) prohibit discrimination against a victim of family violence, and (6) expand assistance to families and children in homes experiencing domestic violence.²¹⁰

¹⁹⁵ *Id.*

¹⁹⁶ *California Assembly Bill 1241*, LEGISCAN, <https://legiscan.com/CA/bill/AB1241/2021> (last visited Dec. 26, 2022).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Rental Housing unlawful housing practices: application: criminal records*, OPEN STS., <https://openstates.org/ca/bills/20212022/AB1241/> (last visited Dec. 26, 2022).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Connecticut Senate Bill 5*, LEGISCAN, <https://legiscan.com/CT/bill/SB00005/2022> (last visited Dec. 26, 2022).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

The primary purpose of S.B. 5 is to create a grant program focused on reducing online abuse occurrences, providing domestic violence training, and implementing certain protections for victims.²¹¹ In addition, this bill grants the Commission on Human Rights and Opportunities the authority to investigate and mediate discriminatory practice complaints.²¹² Similar to California's H.B. 1241, this Connecticut bill appears to push to implement more voluntary mediation.

Oregon: S.B. 1586

Senate Bill 1586 was introduced for its first reading and referred to the President's desk on February 1, 2022.²¹³ The bill's primary sponsor is Senator Kathleen Taylor (D), along with 10 Democratic cosponsors.²¹⁴ After many public hearings and amendments, S.B. 1586 was signed and enacted by the Governor on March 24, 2022.²¹⁵ This bill creates new prohibitions regarding provisions that may not be included in agreements between employers and former, current, or prospective employees.²¹⁶

In this regard, the bill requires that when employees elect to solve their labor disputes via mediation, the mediator is to provide the person who is a party to the mediation, and not represented by an attorney, with a copy of certain policies concerning the prevention of unlawful conduct.²¹⁷ Further, the bill minimizes the confidentiality of certain mediations arising from allegations of misconduct on the employer's part.

III. TRENDS IN LEGISLATION

A. Federal Analysis

The FAIR Act and EFASASHA both essentially aim to prohibit employers and manufacturers from forcing consumers and employees into compelled arbitration. Arbitration may be cheaper, quicker, and more efficient for both parties,²¹⁸ however, the many drawbacks accompanying arbitration make it unconscionable to require individuals with certain claims to resolve their disputes in this way.²¹⁹ One major drawback is the lack of transparency; this allows employers and big companies to continue committing the same unlawful acts without public scrutiny.²²⁰

²¹¹ *Connecticut Senate Bill 5*, LEGISCAN, <https://legiscan.com/CT/bill/SB00005/2022> (last visited Dec. 26, 2022).

²¹² *Id.*

²¹³ *Oregon Senate Bill 1586*, LEGISCAN, <https://legiscan.com/OR/bill/SB1586/2022> (last visited Dec. 26, 2022).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at § 2.

²¹⁸ *H.R. 4445*, *supra* note 157; Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 9 U.S.C § 402 (2021).

²¹⁹ *California Assembly Bill 1241*, LEGISCAN, <https://legiscan.com/CA/bill/AB1241/2021> (last visited Dec. 26, 2022).

²²⁰ *Id.*

Another potential and perhaps more prominent drawback is the uneven “playing field” on which many victims are forced to arbitrate.²²¹ With many employers being repeat players, this puts many victims at a disadvantage when it comes to arbitrator bias and procedural and evidentiary knowledge.²²² Placing the choice on the parties to decide how they wish to resolve these particular disputes enables parties to weigh the pros and cons themselves before choosing which venue is best for them.

EFASASHA recognizes that forcing sexual assault and sexual harassment victims into arbitration leaves the door open for many employers to sweep the issue under the rug and never be held publicly accountable for their actions, allowing employers to repeatedly escape liability. EFASASHA ensures that pre-dispute mandatory arbitration agreements will no longer prevent individuals who have suffered assault or harassment from seeking the justice they desire.²²³

The FAIR Act serves to eliminate forced arbitration in more respects than just sexual harassment and abuse in the workplace.²²⁴ The FAIR Act recognizes that consumers and other individuals are also affected by discriminatory practices and forced arbitration agreements.²²⁵ We see a clear push by the federal Congress to prevent pre-dispute arbitration agreements and joint action waivers for certain claims.

B. State Analysis

The above proposed and enacted bills seem to reflect a trend among several states for more voluntary mediation regarding certain civil rights claims. Mediation is often used to resolve disputes cost-effectively, quickly, and privately.²²⁶ It is an excellent avenue for parties to take should they want to preserve their relationship with one another and save money. Their other option is to litigate the matter. The trend seen by these states regarding many civil rights claims indicates a concern from legislators that an alternative is required for individuals to efficiently resolve disputes without breaking the bank. In addition to establishing that alternative outlet for these claims, bills such as Oregon’s establish certain parameters and ground rules the mediator must follow. This ensures that the process is as fair and effective as possible. In sum, the bills exhibit a push for individuals to have the ability to voluntarily resolve their disputes through mediation, perhaps to give individuals more flexibility in how and when they choose to resolve their disputes.

IV. CONCLUSION

Both trends—preferring mediation and repudiating compelled arbitration—tend to reflect an overwhelming desire to place the power back into the individual’s hands to grant them the ability to choose which venue works best for them, whether through arbitration, mediation, or litigation.

²²¹ 9 U.S.C. § 402.

²²² *Id.*

²²³ 9 U.S.C. § 402.

²²⁴ Forced Arbitration Injustice Repeal Act of 2022, H.R. 963, 117th Cong. § 5 (2022).

²²⁵ *Id.*

²²⁶ *Bills Signed*, *supra* note 143.

**NEW HORIZONS FOR PSYCHOLOGICAL CARE REMEDIED THROUGH
ADR****

- Bill Number:** Idaho House Bill 1305
- Summary:** Creates an Idaho statute that allows Idahoans to work with out-of-state psychologists through telehealth means. The new law provides that any conflicts that may arise through these interactions can be resolved by either mediation or binding arbitration.
- Bill Status:** Signed by the Governor of Idaho (R) on March 23, 2022.
-
- Bill Number:** Indiana Senate Bill 365
- Summary:** Creates an Indiana statute that allows Hoosiers to speak to out-of-state psychologists through telehealth means. The new law provides that any conflicts that may arise through these interactions can be resolved by either mediation or binding arbitration.
- Bill Status:** Signed by the Governor of Indiana (R) on March 10, 2022.
-
- Bill Number:** Wisconsin Assembly Bill 537
- Summary:** Creates a Wisconsin statute that allows ‘Sconnies to work with out-of-state psychologists through telehealth means. The new law provides that any conflicts that may arise through these interactions can be resolved by either mediation or binding arbitration.
- Bill Status:** Signed by the Governor of Wisconsin (D) on February 4, 2022.

I. INTRODUCTION

It should not come as a surprise that COVID-19 presented many Americans with newfound or reignited mental health struggles.²²⁷ Thousands found their daily routine turned upside down; any sort of normalcy was upended by uncertainty and daily updates on how to safely navigate a post-pandemic world. Many people chose to process all these changes by speaking with a licensed counselor or

²²⁷ *The Impact of Covid-19 on mental health cannot be made light of*, WORLD HEALTH ORG. (June 16, 2022), <https://www.who.int/news-room/feature-stories/detail/the-impact-of-covid-19-on-mental-health-cannot-be-made-light-of>.

psychologist.²²⁸ While addressing mental health struggles is something to be celebrated, our mental healthcare system was not set up for the influx of patients and dynamics our present day requires. One of those main difficulties was the sometimes-sudden uprooting and relocating of working Americans.²²⁹

2020 saw single working Americans move at an unprecedented rate.²³⁰ Often times, when people were forced to work from home or were laid off from their jobs entirely, it made more sense to move closer to family or friends. It might no longer be cost-effective to live in a big city with a pay cut, so people fled to quarantine with their loved ones. While moving might take care of some of the social problems the pandemic brought, it made the option of seeing the same psychologist much more difficult.²³¹

Psychologists are licensed on a state-to-state basis, much like attorneys, so they do not have unlimited jurisdiction to practice psychology wherever they please. If one of their clients or patients moves out of their jurisdiction, they usually discontinue working with them.²³² That reality started to change with the introduction of the Psychology Interjurisdictional Compact.

A. *The Compact*

The Psychological Interjurisdictional Compact was approved in 2015 by The Association of State and Provincial Psychology Board of Directors (ASPPB).²³³ Its objective is to allow for people to have access to psychologists out of their jurisdiction via telehealth.²³⁴ Additionally, out-of-jurisdiction psychologists are given limited jurisdiction to provide face-to-face psychological services to clients or patients in other compact states.²³⁵ Essentially, this compact allows Americans who are living in a Compact State to continue seeing the psychologist they have built rapport and comfort with.

One thing to note about the Compact is that it provides only limited jurisdiction to psychologists in states where they are not licensed.²³⁶ If a psychologist is licensed in multiple states, then the rights and bounds of their practice are governed by the state, not this cCompact.²³⁷ There are three important locational terms that are key to understanding what the compact allows psychologists to do. The “home state” is

²²⁸ Sophie Bethune, *Demand for Mental Health Treatment Continues to Increase, Say Psychologists*, AM. PSYCH. ASS'N (Oct. 19, 2021), <https://www.apa.org/news/press/releases/2021/10/mental-health-treatment-demand> (surveyed psychologists report that the demand for their services for clients with anxiety, depression, substance-use disorders, sleep disorders, and obsessive-compulsive disorders increased dramatically from the year prior).

²²⁹ Riordan Frost, *Have More People Moved During the Pandemic?*, JOINT CTR. FOR Hous. STUD. HARV. UNIV. (Nov. 29, 2021), <https://www.jchs.harvard.edu/blog/have-more-people-moved-during-pandemic>.

²³⁰ *Id.*

²³¹ See Isabelle Holt, *PSYPACT: The Psychology Interjurisdictional Compact and What it Means for Psychologists*, ON LABOR (Apr. 25, 2022), <https://onlabor.org/psypact-the-psychology-interjurisdictional-compact-and-what-it-means-for-psychologists/>.

²³² See *id.*

²³³ *Psychology Interjurisdictional Compact (PSYPACT)*, Ass'n State & Provincial Psych. Bds., <https://www.asppb.net/page/PSYPACT> (last visited Dec. 26, 2022).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ See e.g., S.B. 365, 122 Gen. Assemb., 2d Reg. Sess. (Ind. 2022).

²³⁷ See *id.* (“The compact set forth in this article does not apply to the following: (1) when a psychologist is licensed in both the home and receiving state”).

a state where the psychologist is licensed to practice and where they are currently practicing.²³⁸ A “receiving state” is the state where the client or patient resides when they are receiving telehealth psychological services.²³⁹ Finally, the “distant state” is the state where the client or patient lives if they are receiving face-to-face psychological services from an out-of-jurisdiction provider.²⁴⁰

If a psychologist is providing telehealth services, they have unlimited jurisdiction to do that under the compact.²⁴¹ If they are providing face-to-face services under the bounds of the compact, they are only allotted 30 days to administer their services before their limited jurisdiction ends.²⁴² As of the writing of this section, thirty-four states have enacted legislation that joins them into the Psychological Interjurisdictional Compact.²⁴³ The newest states where that legislation has become effective are Idaho, Indiana, and Wisconsin.²⁴⁴

B. ADR’s Role

The original authors of the Psychology Interjurisdictional Compact made sure to allow for non-litigatory alternatives for when disputes arose in two different ways. They saw two main avenues where issues or disputes could arise: between the states and between the licensing board and the psychologists.²⁴⁵ While working through disputes via ADR does not mitigate all the possible contentiousness, it lessens it to a degree that all progress is not stopped in the event of a dispute.

When parties are able to continue providing psychological care to their patients or clients while working out their present issues in a non-litigatory way, all parties benefit. Resolving disputes under this Compact through mediation or arbitration will allow for the work being done by this Compact to propel forward with more ease than if they were handled in court.

II. THE SPECIFICS

Each piece of legislation that ties a new state into the Compact has very little variation from state to state. The Indiana legislation will be used as the example for the ease of reading. The legislation lists out the requirements for receiving states or distant states as well as the necessary qualifications of the psychologist.²⁴⁶ While the psychologist’s home state retains authority over their license, the distant or receiving state may limit the scope of the psychologist’s practice as it sees fit.²⁴⁷

²³⁸ See e.g., *id.*

²³⁹ See e.g., *id.*

²⁴⁰ See e.g., *id.*

²⁴¹ See e.g., *id.*

²⁴² See e.g., S.B. 365, 122 Gen. Assemb., 2d Reg. Sess. (Ind. 2022).

²⁴³ *Map*, Psych. Interjurisdictional Compact, <https://psypact.site-ym.com/page/psypactmap> (last visited Dec. 26, 2022).

²⁴⁴ Ind. S.B. 365; S.B. 1305, 66th Leg. 2d Reg. Sess. (Idaho 2022); A.B. 537, 105th Leg. Reg. Sess.

(Wis. 2022).

²⁴⁵ See e.g., Ind. S.B. 365.

²⁴⁶ See e.g., *id.* (the receiving or distant state must require the psychologist to hold specific documentation that allows them to practice out-of-jurisdiction and they must also have a mechanism set up to handle complaints and other issues with the psychologist, amongst other things, lists out eight qualifications the psychologist must have in order to practice telepsychology or limited face-to-face practice).

²⁴⁷ See e.g., *id.*

If the psychologist's license is suspended or limited in any way by either their home state or other Compact state, their documentation that allows them to practice out of their jurisdiction²⁴⁸ is revoked and they are no longer privy to the rights granted to them in this compact.²⁴⁹ The Compact refers to these instances as "adverse actions".

The Compact also requires the compact state to establish a Psychology Inter-jurisdictional Compact Committee.²⁵⁰ This committee is to create bylaws and make sure that the goals of the compact are being reached in that specific compact state.²⁵¹ If a compact state falls out of compliance with the obligations and responsibilities, it is the job of the Committee in accordance with the other compact states, to determine whether the defaulting state should be terminated from the compact.²⁵² This, along with the "adverse actions" are where ADR can be implemented.

III. ADR TIMES TWO

The ASPPB had the forethought to allow ADR practices in multiple scenarios, thus allowing for the momentum of the compact to not be stalled whenever a conflict arises. The possible issues exist in different spheres but are equally important.

A. Adverse Actions

According to the compact, an adverse action is "any action taken by a state psychology regulatory authority that finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record."²⁵³ This pertains to any action taken by the home state, distant state, or receiving state that either limits or suspends the psychologist's ability to practice psychology. Each piece of legislation gives the compact state the option of allowing the psychologist to complete an alternative program in lieu of filing an adverse action.²⁵⁴ An alternative program is any non-disciplinary monitoring program intended to remediate the licensee.²⁵⁵ While participation in an alternative program is not a piece of traditional ADR, it is an alternative way to address a dispute, which at the heart of ADR.

By allowing a psychologist to participate in this type of program, the compact state maintains the psychologist/client relationship. It is not clear what a state's psychology regulatory authority is able to do when sanctioning a psychologist with an adverse action, but the loss of the psychologist's license is a likely option. If that happens, the client or patient must start the process of finding and feeling comfortable with a new psychologist from the beginning again. It is also not clear regarding alternative programs, but acceptance into and completion of said alternative

²⁴⁸ *Id.* (their "E.Passport" for practicing telepsychology or "interjurisdictional practice certificate" for in-person practice).

²⁴⁹ *See e.g., id.*

²⁵⁰ *See e.g., S.B. 365.*

²⁵¹ *See e.g., id.*

²⁵² *See e.g., id.*

²⁵³ *See e.g., id.*

²⁵⁴ *See e.g., id.*

²⁵⁵ *Glossary of Key Terms, PSYCH. INTERJURISDICTIONAL COMPACT*, <https://psypact.site-ym.com/page/keyterms> (last visited Aug. 8, 2022).

program likely means that the psychologist will retain their license and the client or patient does not need to find a new psychologist.

B. *Interstate Compact Conflicts*

When requested by a participating state, an issue between compact states or between a compact state and a non-participating state regarding the compact can be resolved through ADR.²⁵⁶ It is the commission's job to create a rule that provides for mediation or binding arbitration if those options are chosen.²⁵⁷ The compact does not lay out any more information regarding how or why these conflicts would arise, but the possibility of addressing them through ADR allows the momentum of the compact to continue. This compact is about helping citizens of compact states receive mental health services. Allowing the compact states in conflict to mediate their disputes keeps the goal of helping citizens in focus.

IV. CONCLUSION

The compact and additional materials did not spell out conditions that would call for either an adverse action or an alternative program. There are going to be some circumstances where a psychologists' license should not be reinstated, or they should not remain with the same client or patient. However, it is likely that most of the sanctionable offenses a psychologist might run into would not fall into that category. If it is not harmful for the client to remain with the psychologist, then it should be best practice to keep that client/practitioner relationship as intact as possible. This compact allows for those relationships to remain solid, which is typically in the best interest of the client.

In a less direct way, this compact also benefits the client by limiting the ability for the cost of treatment to skyrocket due to litigation or fees related to long-standing disputes. While there is no literature on point, assuming the principles that apply to ADR in the traditional legal context apply here, it would follow that allowing for ADR-adjacent options in disputes arising under this compact would keep the costs of mental health treatment at a normal or lower rate.²⁵⁸ The quicker these disputes can be dealt with, the more mental health services the client can receive. When licensed psychologists are able to handle disciplinary matters effectively and efficiently, mental health as a whole wins. When, in turn, clients are more secure in their mental health provider, we all win.

Streamlining tends to make the applicable process much smoother. At its center, that is what the Psychology Interjurisdictional Compact does. It makes it easier for mental health clients to continue to see their chosen psychologist, and it answers important questions about how the compact is to work. It gives step-by-step instructions on what is required by all parties and finishes up with attempting to solve foreseeable future issues. In a day and age when discussions about mental health

²⁵⁶ See e.g., Ind. S.B. 365.

²⁵⁷ See e.g., *id.*

²⁵⁸ See also *ADR Types & Benefits*, CAL. CTS., <https://www.courts.ca.gov/3074.htm#panel4538> (last visited Dec. 26, 2022) ("When cases are solved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses").

are of the utmost importance, the Psychology Interjurisdictional Compact gives those discussions the spotlight.

II. HIGHLIGHTS

This section informs the reader of the year's statutes that the individual authors found unique and interesting. They are presented in alphabetical order, with no preference or editorializing involved.

California House Bill 2318[†]

The Judicial Proceedings for the Hearing Impaired Act is to amend Section 54.8 of the California Civil Code.²⁵⁹ It was initially proposed and eventually introduced by Assembly Member, Evan Low (D-Silicon Valley).²⁶⁰ The bill would allow a hearing impaired participant in any court proceeding or alternative dispute resolution to be provided with a functioning assistive listening system or a computer-aided transcription system,²⁶¹ upon request.²⁶² The Judicial Council is to develop forms for notice to ensure awareness of the availability those accommodations.²⁶³ The bill also mandates the courts to maintain a system to record utilization of these assistive listening systems and computer-aided transcription systems.²⁶⁴ The Judicial Proceedings for the Hearing Impaired Act is awaiting a first read in committee since its introduction to the Assembly in early February 2021/22.²⁶⁵

*Colorado Senate Bill 19^{**}*

The foundation for this bill was enacted in 2020 and suppressed any and all court records for eviction proceedings, if and until an order is granted for the landlord.²⁶⁶ Authored by Steven Woodrow (D) and Faith Winter (D), S.B. 19 creates additional avenues for accessing suppressed eviction records.²⁶⁷ The foundational bill limited who had access to the suppressed records; S.B. 19 adds three more categories of people who have access.²⁶⁸ Now, a person who is an attorney or is

²⁵⁹ See CAL. CIV. CODE § 54.8 (2019).

²⁶⁰ H.B. 2318, 2021–22 Leg., Reg. Sess. (Cal. 2022).

²⁶¹ *Id.* Assistive listening systems include, but are not limited to, special devices that transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission, *id.* Personal receivers, headphones, and neck loops shall also be available upon request by individuals who are deaf or hard of hearing, *id.*

²⁶² *Id.* (any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or forum no later than five days before a proceeding).

²⁶³ *Id.* (as used in this section, “Individual who is deaf or hard of hearing” means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding).

²⁶⁴ *Id.*

²⁶⁵ *Id.* (noted in “Bill Tracking” section).

²⁶⁶ See COLO. REV. STAT. § 13-40-110.5 (2020).

²⁶⁷ S.B. 19, 73rd Gen. Assemb., 2d Reg. Sess. (Colo. 2022).

²⁶⁸ *Id.*; COLO. REV. STAT. § 13-40-110.5 (the foundational bill only granted viewing access of these records to judges, the court staff, the parties attorneys, authorized judicial staff and people with a valid court order authorizing their access to the records).

acting on behalf of one of the party's attorneys is allowed access to these records as well as anyone who was given written or verbal permission by a person included in the court record.²⁶⁹ The third category is focused on the purpose of accessing the records. Here, anyone who accesses the records for the purpose of giving legal advice to or determining whether or not to enter an appearance for the party who granted viewing permission is allowed access to the records.²⁷⁰ The same is true if the purpose of accessing the records is evaluating whether or not the matter would be suitable for mediation.²⁷¹ The bill passed through the House and Senate on March 8, 2022 and was signed by Governor Jared Polis (D) on March 15, 2022.²⁷²

Connecticut Senate Bill 5[†]

The Judiciary Committee developed a grant program that creates and supports cost-effective responses to domestic violence, sexual assault, online abuse, dating violence and stalking.²⁷³ Connecticut enhanced access to safety for individuals when Ned Lamont signed Senate Bill 5 into law on May 24, 2022.²⁷⁴ The Act provides legal assistance, alternatives to criminal responses, and prevention programming to encourage community-coordinated efforts to combat domestic violence and online abuse.²⁷⁵ The Act also produces new, holistic responses and programs to meet the emerging needs of survivors and communities by establishing and maintaining offices as deemed necessary by the Commissioner of Human Rights and Opportunities.²⁷⁶ The commission may investigate any complaint on any matter under the provisions of section 1 to 4 of this act.²⁷⁷ If adverse action against an individual is pursued, the commission has the option of requiring the individual to enter an alternative dispute resolution program.²⁷⁸ The commission is also charged with developing and implementing rules that provide for mediation and binding dispute resolution for disputes.²⁷⁹

*Hawaii Senate Bill 2642 and House Bill 2211**

Hawaii Senate Bill 2642 was introduced in the Senate on January 21, 2022, by Senator Rosalyn H. Baker (D).²⁸⁰ The House's companion piece, House Bill 2211, was introduced in the House on January 25, 2022, by Representative Linda Ichiyama (D).²⁸¹ Both bills establish a statutory exemption from mediation in paternity proceedings where there are allegations of domestic abuse²⁸² along with

²⁶⁹ Colo. S.B. 19.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ S.B 5, 2022 Leg., Reg. Sess. (Conn. 2022).

²⁷⁴ *See Proposed S.B. No. 5 Session Year 2022*, Conn. Gen. Assemb., https://www.cga.ct.gov/asp/CGABillStatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB5.

²⁷⁵ Conn. S.B. 5.

²⁷⁶ *Id.*

²⁷⁷ *See id.* §§ 1–4.

²⁷⁸ *See id.*

²⁷⁹ *See id.*

²⁸⁰ An Act Relating to Family, S.B. 2642, 31st Leg., Reg. Sess. (Haw. 2022).

²⁸¹ *Id.*

²⁸² Haw. H.B. 2211; Haw. S.B. 2642.

domestic abuse screening procedures that mediators must follow before providing court-ordered services.²⁸³ H.B. 2211 also amends the exemption from mediation in divorce proceedings by prohibiting courts from compelling mediation when there are allegations of domestic abuse.²⁸⁴

Both bills are currently under advisement by the House Committees on Health, Human Services, & Homelessness, and Judiciary & Hawaiian Affairs.²⁸⁵ No activity on these bills has occurred since March 10, 2022.²⁸⁶

Massachusetts House Bill 4545^{††}

Massachusetts House Bill 4545 defines labor peace agreements between labor organizations and employer in the cannabis industry. The agreements provide employees with certain labor rights including unionizing while prohibiting labor organizations from “engaging in picketing, work stoppages, or boycotts.”²⁸⁷ The sole remedy for violations of these labor peace agreements is binding arbitration.²⁸⁸

Massachusetts House Bill 4545 began as Massachusetts House Bill 3710.²⁸⁹ Massachusetts House Bill 3710 was introduced on May 6, 2021, by Representative Steven Owens (D) together with Representatives Lindsay Sabadosa, Patrick Kearney, James Eldridge, Jack Lewis, and Natalie Higgins.²⁹⁰ It was referred to the committee on Cannabis Policy the same day.²⁹¹ On November 17, 2021, both chambers scheduled a virtual hearing for December 1, 2021, and the Joint Committee on Cannabis Policy held the virtual hearing.²⁹² On May 24, 2022, the House Committee on Cannabis Policy created a new draft of the bill entitled House Bill 4545 to replace House Bill 3710.²⁹³ This draft was reported favorably by the House committee on Cannabis Policy and referred to the committee on House Steering, Policy, and Scheduling.²⁹⁴ On May 17, 2022, the committee requested the matter be placed in the Orders of the Day for a second reading during the next sitting.²⁹⁵ The bill still awaits a second reading.²⁹⁶

Michigan House Bill 5609^{††}

Michigan House Bill 5609 updates Michigan’s public health code by amending provisions related to nursing home citation appeals.²⁹⁷ Under new section § 22115, such nursing homes may appeal citations through informal dispute resolution

²⁸³ Haw. H.B. 2211; Haw. S.B. 2642.

²⁸⁴ Haw. H.B. 2211; Haw. S.B. 2642.

²⁸⁵ Haw. H.B. 2211; Haw. S.B. 2642.

²⁸⁶ Haw. H.B. 2211; Haw. S.B. 2642.

²⁸⁷ An Act to Facilitate the Unionization of the Cannabis Workforce, H.B. 4545, 192nd Leg., Reg. Sess. (Mass. 2022).

²⁸⁸ *Id.*

²⁸⁹ See An Act to Facilitate the Unionization of the Cannabis Workforce, H.B. 3710, 192nd Leg., Reg. Sess. (Mass. 2021) <https://malegislature.gov/Bills/192/H3710>.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Mass. H.B. 3710; Mass. S.B. 4545.

²⁹⁴ Mass. H.B. 4545.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ H.B. 5609, Leg., Reg. Sess. (Mich. 2021).

processes.²⁹⁸ The department may use any findings from the dispute resolution process to improve statewide training.

Representative Bronna Kahle (R) introduced House Bill 5609 on December 7, 2021.²⁹⁹ It was read for the first time that same day and referred to the House Committee on Health Policy.³⁰⁰ On April 28, 2022, the committee reported a recommendation with a substitute (h-1) and referred it for a second reading.³⁰¹ House Bill 5609 was read a second time on May 18, 2022, and the substituted bill (h-1) was adopted and amended (h-2).³⁰² The next day, the bill was read a third time and passed 101-4.³⁰³ On May 24, 2022, the bill was referred to the Senate Committee on Health Policy and Human Services, which reported favorably with a substitute (s-1), recommended that it take immediate effect, and reported it to the Senate Committee of the Whole on June 23.³⁰⁴ On June 30, the Committee of the Whole reported it favorably with a substitute (s-2).³⁰⁵ That same day, the Senate suspended the rules and placed it on immediate passage, where it passed 38-0, and the House suspended its rules and passed the Senate's substitute (s-2) 346-4.³⁰⁶ It awaits the governor's signature.³⁰⁷

*Michigan House Bill 5987***

The Restorative Justice Practice Enabling Act was initially proposed by the Michigan Restorative Justice Counsel and introduced by State Representative, David LaGrand (D).³⁰⁸ This bill intended to foster a more victim-centered approach to justice by allowing the alleged victim to express their pain and what they need to heal.³⁰⁹ This method of justice, labeled “restorative justice facilitation,” is completely voluntary.³¹⁰ These meetings must take place at a specified dispute resolution center and can either be run by a facilitator or a mediator.³¹¹ Any party to a criminal offense can participate in the restorative justice facilitation. However, if the offense involved a victim, a mediator is not qualified to run the meeting and a facilitator must be assigned.³¹² The mediator or facilitator is to enable discussion

²⁹⁸ *Id.* at § 22115.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ Mich. H.B. 5609.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Restorative Justice Practices Enabling Act: An Act in the Making*, DIOCESE GRAND RAPIDS, <https://grdiocese.org/mirestorativejustice/> (last visited July 9, 2022); LaGrand Introduces Restorative Justice Bill to Give Victims Tools to Aid in Healing from Harm, MICH. HOUSE DEMOCRATS (Mar. 25, 2022), <https://housedems.com/lagrand-introduces-restorative-justice-bill-to-give-victims-tools-to-aid-in-healing-from-harm/>.

³⁰⁹ *Restorative Justice Practices Enabling Act: An Act in the Making*, *supra* note 308.

³¹⁰ H.B. 5987, 101st Leg., Reg. Sess. (Mich 2021).

³¹¹ *Id.* The difference between the two is that a facilitator has more specified training in restorative justice concepts, *id.* If a mediator runs the restorative justice meetings, they must be supervised by a facilitator, *id.*

³¹² *Id.*

and help the parties work towards an agreement; they are not to impose or make any decisions for the parties.³¹³ Since its introduction to the House in early April 2022, H.B. 5987 has been passed onto the Judiciary Committee where it has remained since April 12, 2022.³¹⁴

*Oklahoma House Bill 3286**

Oklahoma House Bill 3286 was introduced in the House on February 7, 2022, by Representatives Jacob Rosencrants (D)³¹⁵ and Justin Humphrey (R),³¹⁶ with support from Senator Michael Bergstrom (R).³¹⁷ The second reading of the bill was referred to the Rules Committee on February 8, 2022, but was withdrawn twenty days later and instead referred to the Criminal Justice and Corrections Committee (“CJCC”).³¹⁸ H.B. 3286 was amended by the CJCC on March 3, 2022, and subsequently referred to the Public Safety and Appropriations Committees. Both Committees recommended the bill pass as amended.³¹⁹

The Senate passed the bill on April 26, 2022, with thirty-eight in favor and five against.³²⁰ The bill was transmitted to the House on April 27, 2022.³²¹ The House passed the bill on May 18, 2022, with eighty-two in favor and six against.³²² The bill was delivered to Governor Kevin Stitt³²³ (R) on May 19, 2022 and signed into law on May 26, 2022.³²⁴

H.B. 3286, titled as the Homicide Prevention Act, expands the statutory definition of stalking under 21 O.S. 2021 § 1173 to include a broader range of conduct and enhances the penalties that offenders face.³²⁵ H.B. 3286 also expands who qualifies to seek an order of protection,³²⁶ makes it easier to obtain continuous orders where the offender represents an ongoing threat to the victim,³²⁷ and prohibits courts from imposing terms on protective orders that would compromise the victim’s safety such as joint counseling or mediation.³²⁸

³¹³ Mich. H.B. 5987.

³¹⁴ *Id.* (noted in bill tracking section).

³¹⁵ *Jacob Rosencrants – House of Representatives Member Page*, OKLA. HOUSE, <https://www.okhouse.gov/Members/District.aspx?District=46> (last visited July 3, 2022).

³¹⁶ *Justin Humphrey – House of Representatives Member Page*, OKLA. HOUSE, <https://www.okhouse.gov/Members/District.aspx?District=19> (last visited July 3, 2022).

³¹⁷ *Michael Bergstrom – Senator Page*, OKLA. SENATE, <https://oksenate.gov/senators/micheal-bergstrom> (last visited

July 3, 2022); *Bill Information for HB 3286*, OKLA. LEG., <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3286&Session=2200> (last visited Nov. 16, 2022).

³¹⁸ *Bill Information for H.B. 3286*, OKLA. LEG., <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3286&Session=2200> (last visited July 3, 2022).

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*; *About Governor Stitt*, OKLA. GOV., <https://oklahoma.gov/governor/about/governor.html> (last visited July 3, 2022).

³²⁴ *See Bill Information for H.B. 3286*, OKLA. ST. LEG., <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3286&Session=2200> (last visited November 11, 2022).

³²⁵ H.B. 3286, 58th Leg., Reg. Sess. (Okla. 2022).

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

Washington House Bill 1688^{††}

On January 10, 2022, Representative Eileen Cody (D) and 32 cosponsors—at the request of the Insurance Commissioner—introduced Washington House Bill 1688.³²⁹ Of the 32 cosponsors, only five were Republican.³³⁰ The purpose of H.B. 1688 is to protect consumers from charges for out-of-network healthcare services.³³¹ H.B. 1688 aligns state law with the federal “No Surprises Act”³³² and addresses coverage of treatment for emergency conditions.³³³ Section one amends RCW 43.371.100 to include a dispute resolution process where consumers will be protected from charges of out-of-network health care services.³³⁴

Section eleven amends RCW 48.49.040, to establish clear guidelines for an independent dispute resolution process for out-of-network providers and patients.³³⁵ H.B. 1688 also establishes an arbitration process where consumers and health care providers must resolve disputes to determine the commercially reasonable payment amount, ensuring that consumers are not overcharged for out-of-network emergency services.³³⁶ After its first read on January 10, 2022, the bill was referred to the Committee on Health Care & Wellness.³³⁷ H.B. 1688 gained widespread acceptance and moved quickly through both houses with Governor Jay Inslee (D) expeditiously signing it on March 31, 2022.³³⁸

Washington House Bill 1228^{††}

In response to the COVID-19 public health emergency, Washington introduced House Bill 1228.³³⁹ During the COVID-19 pandemic, Washington experienced an economic downturn.³⁴⁰ Many residents were unable to pay their rent due to layoffs and reduced work hours.³⁴¹ To rectify the situation, Representative Andrew Barkis (R), along with 19 cosponsors, introduced House Bill 1228,³⁴² which addresses residential landlord-tenant requirements.³⁴³

H.B. 1228 instructs the administrative office of the courts to establish a dispute resolution program to help parties facilitate a quicker resolution when a tenant fails to pay rent.³⁴⁴ The program is only to be used for tenant nonpayment disputes.³⁴⁵ H.B. 1228 establishes that the landlord and the tenant will first attempt resolution

³²⁹ H.B. 1688, Leg., Reg. Sess. (Wash. 2022).

³³⁰ *Representatives*, WASH. ST. LEG., <https://leg.wa.gov/house/representatives/pages/default.aspx> (last visited Nov. 11, 2022).

³³¹ Wash. H.B.1688.

³³² No Surprise Act, H.R. 133, 116th Cong. (2020).

³³³ Wash. H.B.1688.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *See generally id.*

³³⁹ H.B. 1228, Leg., Reg. Sess. (Wash. 2022).

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ H.B. 1228.

though a third-party facilitator prior to the landlord filing a claim.³⁴⁶ Section six of H.B. 1228 states that in counties with a population of less than 275,000 people, the program is to maintain its own facilitator to act as a third-party neutral.³⁴⁷ Counties with larger populations are instructed to operate through a local dispute resolution center.³⁴⁸ H.B. 1228 currently sits in the House Committee on Housing, Human Services & Veterans as of January 10, 2022.³⁴⁹

III. LEGISLATIVE CATALOG

This section operates as an accumulation of *all* the laws found—passed or pending—by state or federal legislative bodies revolving around ADR. This update was last updated in November 2022. Accordingly, some statutes that were pending may not have been passed and some laws that were passed may have been challenged.

Alabama[†]

- Bills Enacted:** 2022 S.B. 99 (the purpose is to facilitate interstate practice of licensed professional counselors with the goal of improving access to professional counseling services. The Commission may choose to resolve disputes with member and nonmember states through mediation or binding arbitration); 2022 S.B. 167 (the purpose is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The Commission may choose to resolve disputes with member and nonmember states through mediation or binding arbitration).
- Bills Pending:** 2022 H.B. 1 (to provide workplace protections against pregnancy discrimination and related medical conditions. The Secretary of Labor must provide all information relevant to any matter the board of mediation has been appointed to consider).

Alaska[†]

- Bills Enacted:** None
- Bills Pending:** 2022 H.B. 388 (requiring physicians to prescribe drugs and pharmacists to refill prescriptions under health plans. The board may impose a sanction on the licensee if the patient has been denied care or treatment solely for refusing to agree to arbitration).

³⁴⁶ *Id.*

³⁴⁷ *Id.* at §6

³⁴⁸ *Id.*

³⁴⁹ *Id.*

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Arizona[†]

Bills Enacted: 2022 S.B. 1468 (the purpose is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The Commission may choose to resolve disputes with member and nonmember states through mediation or binding arbitration).

Bills Pending: 2022 S.B. 1439 (provides alternatives to student discipline in public schools. A school district may modify an expulsion if the student participates in mediation); 2022 S.B. 1069 (if any party objects to a motion for permanent guardianship of a child, the court may schedule a mediation to resolve the dispute); 2022 H.B. 2499 (the director may first attempt to resolve a dispute as to whether the employer did not provide family or medical leave benefits through mediation).

Arkansas[†]

Bills Enacted: 2022 S.B. 24 (allows for mediator services to be paid by federal funds).

Bills Pending: None.

California[†]

Bills Enacted: None.

Bills Pending: 2021 H.B. 2318 (ensures that a person who is deaf or hard of hearing will be provided with a functioning assistive listening system if requested during mediation); 2021 H.B. 1663 (directs the Judicial Council to establish and staff a program to provide assistance and training to mediators); 2022 H.B. 1949 (provides that the Department of Fair Employment and Housing create a family leave mediation pilot program for employers, which requires the employee to mediate prior to filing a lawsuit); 2022 S.B. 1092 (requires the State Department to contract with regional centers to provide services to individuals with developmental disabilities. It makes mediation mandatory for a service agency if requested); 2022 H.B. 1935 (allows a commenter on an environmental impact report to participate in nonbinding mediation with the entire lead agency); 2022 S.B. 1057 (allows a juvenile court to delay driving privileges to a student that is continually absent at school. The student may be required to attend a mediation program); 2022 H.B. 1241 (requires the Department of Fair Employment and Housing to mediate complaints

alleging housing discrimination); 2022 S.B. 1288 (requires publicly funded colleges and universities to provide sexual assault victims with information about the availability of mediation).

Colorado[†]

Bills Enacted: 2022 S.B. 230 (creates a statutory framework for county employees to collectively bargain with their employer over wages, hours, and other terms through mediation); 2022 S.B. 19 (allows a person to access suppressed court records only to evaluate whether a matter is suitable for mediation).

Bills Pending: 2022 S.B. 77 (creates a compact between member states that improves public access to licensed counselors. Member states can request the Commission to resolve disputes with mediation or binding arbitration); 2022 H.B. 1314 (Allows a towing service, owner or lienholder to resolve disputes through mediation involving nonconsensual tows).

Connecticut[†]

Bills Enacted: 2022 H.B. 5330 (a heating fuel dealer cannot deny delivery of fuel to his own tanks for heat, cooking or power to a consumer because a complaint is being mediated); 2022 H.B. 5046 (develops a common process between member states that allows physicians to become licensed in multiple states to increase access to health care. Member states can request the Commission to resolve disputes with mediation or binding arbitration); 2022 S.B. 2 (expands mental and behavior services for children, such as mental health screenings for student athletes. The Commission may choose to resolve disputes with member and nonmember states through mediation or binding arbitration); 2022 S.B. 5 (establishes varies programs, training, and requirements for domestic violence, online abuse, and other online activities. The Commission has the authority to investigate and mediate discriminatory practice complaints); 2022 H.B. 5001 (allows the Commissioner of Public Health to waive license requirements for practitioners who provide mental health services to children. Certain statements contained in mental health packets for children must include contact information for said offices).

Bills Pending: 2022 S.B. 420 (does not require the State Board of Mediation to adopt a zero-tolerance policy for using managerial authority to

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discriminate or retaliate against employees who make discrimination complaints).

Delaware[†]

Bills Enacted: 2021 S.B. 272 (creates a multi-state audiology and speech-pathology compact to ease public access to those services for citizens of member states. The Commission may choose to resolve disputes with member and nonmember states through mediation or binding arbitration).

Bills Pending: 2021 H.B. 364 (provides a registration system for ASL interpreters to ensure only qualified individuals provide services to the deaf and hard of hearing in dispute resolution forums).

Florida[†]

Bills Enacted: None.

Bills Pending: None.

Georgia[†]

Bills Enacted: None.

Bills Pending: None.

Hawaii^{**}

Bills Enacted: 2021 H.B. 1587 (creates an interstate mutual aid system and calls for binding arbitration if a dispute arises over reimbursement for assistance provided).

Bills Pending: 2021 H.B. 2642 (provides for an exemption from mediation in paternity and divorce proceedings if there are allegations of domestic abuse).

Idaho^{**}

Bills Enacted: 2022 H.B. 664 (creates a multi-state audiology and speech-pathology compact to ease the access to those services to citizens of the member states. Member states can choose to resolve disputes through mediation or binding arbitration); 2022 S.B. 1305 (allows people to talk to psychologists from different states through telehealth means. States within the compact may choose to resolve conflicts through mediation or binding arbitration); 2022 H.B. 703 (re-establishes the Homeowner's Association

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Act. Members of the homeowner's association can be excluded from an executive session if ongoing or potential mediation or arbitration is being discussed).

Bills Pending: None.

*Illinois***

Bills Enacted: 2021 H.B. 4674 (amends the Nursing Home Care Act. Requires records to be kept of all informal dispute resolutions that were requested, granted, overturned, or reduced in severity); 2021 H.B. 4703 (amends the Illinois Insurance Code regarding billing for medical services. If there is a dispute for payment, arbitration cannot be used).

Bills Pending: 2021 H.B. 4531 (ratifies and approves the Nurse Licensure Compact. Member states may choose to resolve disputes through mediation or binding arbitration); 2021 H.B. 5555 (amends the Business Assistance and Regulatory Reform Act. Disputes regarding timetables should be resolved by mediation); 2021 H.B. 5009 (arbitrator's decisions involving peace officer suspensions of 30 days or terminations are subject to judicial review under the Administrative Review Law); 2021 H.B. 4919 (sets out arbitration procedures when an employer refused to bargain collectively).

*Indiana***

Bills Enacted: 2022 S.B. 365 (allows people to talk to psychologists from different states through telehealth means. States within the compact may choose to resolve conflicts through mediation or binding arbitration); 2022 S.B. 5 (health care professionals who meet certain listed requirements can apply for a professional license or provisional certificate. The Commission may choose to resolve disputes between member states through mediation or binding arbitration); 2022 S.B. 76 (gives allowance to certain public safety employees to request advisory opinions from the commissioner. The commissioner may promote voluntary arbitration, mediation, or other dispute resolution option).

Bills Pending: None.

*Iowa***

Bills Enacted: 2022 S.F. 463 (improves access to occupational therapy, audiology and speech pathology to member states. Member states can

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choose to resolve disputes with member and nonmember states through mediation or binding arbitration); 2022 H.F. 2468 (sets time limits on any and all arbitration proceedings in Iowa).

Bills Pending: None.

*Kansas***

Bills Enacted: 2021 S.B. 28 (requires licensure rather than mere registration for pharmacies. When applying for a license, the application should have a dispute resolution process as a part of their application).

Bills Pending: None.

*Kentucky***

Bills Enacted: 2022 H.B. 213 (improves access of occupational therapy to member states. Member states can choose to resolve disputes with member and nonmember states through mediation or binding arbitration); 2022 H.B. 65 (creates a compact between member states that improves public access to licensed counselors. Member states can request the commission to resolve disputes with mediation or binding arbitration).

Bills Pending: None.

*Louisiana***

Bills Enacted: 2022 H.B. 582 (creates a compact between member states that improves public access to licensed counselors. Member states can request the commission to resolve disputes with mediation or binding arbitration); 2022 H.B. 1078 (creates a timber and agricultural transportation group self-insurance fund. If there is a dispute regarding the claiming of lost commissions, the parties are instructed to either follow the dispute resolution terms in their agreement, or if there are none, resolve through mediation).

Bills Pending: None.

*Maine***

Bills Enacted: 2021 S.P. 568 (creates a Logging Dispute Resolution Board); 2021 H.P. 1427 (creates a compact between member states that improves public access to licensed counselors. Member states can request the commission to resolve disputes with mediation or binding arbitration); 2021 H.P. 1516 (the Maine Judicial Department is allowed to refer cases to a mediation service); 2021

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S.P. 551 (court-mandated mediation is not appropriate for domestic abuse cases).

Bills Pending: None.

*Maryland***

Bills Enacted: 2022 H.B. 1148 (provides a differentiator between federal and state law concerning value-based arrangements. Allows for a third-party dispute process if there has been good-faith negotiations).

Bills Pending: None.

Massachusetts††

Bills Enacted: None.

Bills Pending: 2021 MA H.B. 760 (establishes foreclosure mediation programs); 2021 MA H.B. 4646 (amends Chapter 71, section 37H of Massachusetts general statutes by requiring school administrators to engage in alternative remedies such as mediation, conflict resolution, restorative justice, and collaborative problem-solving before suspending or expelling a student under the RAISE Act to prevent inequities); 2021 S.B. 2786 (same general provisions as MA H.B. 4646); 2021 MA H.D. 4390 (requires the human resources offices to provide mediation and conflict resolution training to legislative employees); 2021 MA S.D. 2713 (same general provisions as MA H.D. 4390); 2021 MA H.B. 4571 (requires arbitration procedures for disputes over housing emissions renovations performed using state funds); 2021 MA H.B. 4545 (designating arbitration as the exclusive remedy for a violation of a labor peace agreement in the cannabis industry); 2021 MA S.B. 2662 (same general provisions as 2021 MA H.B. 4545); 2021 MA S.B. 2567 (providing for binding arbitration of warranty protections disputes for consumers with disabilities); 2021 MA S.B. 2675 (requiring real estate brokers to spend a certain number of hours learning about alternative dispute resolution).

Michigan††

Bills Enacted: 2021 MI H.B. 5609 (authorizing nursing homes to engage in informal dispute resolution processes to appeal citations and to use its findings to inform training sessions).

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Bills Pending: 2021 MI H.B. 5987 (establishing restorative justice procedures for criminal defendants and establishes criteria for mediators and facilitators); 2021 MI H.B. 5820 (expands 1969 PA 312 to require compulsory arbitration for all public employees' labor disputes and to require that arbitration awards be approved by the civil service commission); 2021 MI S.B. 914 (same general provisions as 2021 MI H.B. 5820).

Minnesota^{††}

Bills Enacted: None.

Bills Pending: 2021 MN H.F. 3287 (establishing a grant program for stable housing mediation to fund and increase access to voluntary housing mediation services to prevent eviction and housing instability); 2021 MN H.F. 309 (reorganizing the office of collaboration and dispute resolution to be led by the commissioner of administration and to allow for grant awards to mediation entities and to carry out the office's mission of promoting dispute resolution processes); 2021 MN H.F. 2711 (requiring homeowner's associations to adopt specific dispute resolution processes as set forward in the bill).

Mississippi^{††}

Bills Enacted: None.

Bills Pending: None.

Missouri^{††}

Bills Enacted: None.

Bills Pending: 2022 MO H.B. 2660 (replaces section 435.014 with new provisions for referring civil cases to mediation or non-binding dispute resolution processes and determines that alternative dispute resolution communications are not admissible in evidence or subject to discovery absent narrow exceptions); 2022 MO S.B. 1148 (same general provisions as 2022 MO H.B. 2660); 2022 MO H.B. 1533 (establishes provisions for default on payment of arbitration fees in employment or consumer arbitration).

Montana^{††}

Bills Enacted: None.

Bills Pending: None.

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*Nebraska^{††}***Bills Enacted:** None.**Bills Pending:** None.*Nevada^{††}***Bills Enacted:** None.**Bills Pending:** None.*New Hampshire^{††}*

Bills Enacted: 2021 New Hampshire Laws Ch. 207 (2021 NH S.B. 143) (establishing a quality assurance program within the office of mediation and arbitration to assist the program's administration, including investigating complaints about court dispute resolution programs and evaluating the appropriateness of the programs provided); 2021 NH H.B. 581 (establishing a committee for special education dispute resolution options); 2021 NH S.B. 336 (establishing the qualifications and participation of qualified interns and contracted supervisors in family mediation).

Bills Pending: None.*New Jersey^{††}***Bills Enacted:** None.

Bills Pending: 2022 NJ A.B. 608 (amending Title 2A, Section 23B-11 to require that parties agree, before appointing an arbitrator, that an arbitrator who thereafter serves as a mediator may resume the role of arbitrator and to vacate awards made in the arbitration proceeding by such an arbiter); 2020 NJ A.B. 5862 (establishing collective negotiations for public employees); 2022 NJ A.B. 1390 (establishing a dispute resolution review program for physicians and health care facilities to settle disputes about balance billing for non-participating physicians and non-network facilities).

New Mexico^{}*

Bills Enacted: H.B. 2 (allocates funding for special court services including children's mediation services, court-ordered and voluntary alternative dispute resolution services, and the state ombudsman); H.B. 35 (prevents the waiver of court-ordered mediation during an adoption proceeding involving a child who is a

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member of an Indigenous tribe. Also permits the child's tribe to participate in proceedings, regardless of whether or not the tribe has previously attempted to intervene in the adoption); S.B. 150 (updates the definition of a “qualified jurisdiction” under which an assuming insurer is eligible for consideration as a certified reinsurer. A jurisdiction will not be recognized as qualified if it is determined that the jurisdiction does not adequately and promptly enforce final judgments or arbitration awards); S.B. 4 (a person who files suit alleging that a contractor, subcontractor, or employer has failed to pay wages or fringe benefits required by the act may—within 30 days—request mediation).

Bills Pending: None.

*New York**

Bills Enacted: S.B. 7699 (prohibits educational institutions from conditioning the receipt of state financial aid awards on the student’s agreement to mandatory arbitration, internal dispute resolution, or the waiver of any of the student's legal rights).

Bills Pending: A.B. 1464 (requires employment and consumer dispute arbitrations to be submitted to neutral third-party arbitrators and establishes prohibited arbitration agreements and provisions; requires disclosure of information by certain arbitrators); S.B. 8377 (alters general business law to define certain terms in standard form contracts as unconscionable); S.B. 8458 (requires changes to employment law to provide that if a discharged employee makes a valid offer to arbitrate that is not accepted by the employer and the employee prevails in an action under this article, the employee shall be entitled to reasonable attorneys' fees incurred subsequent to the date of the offer); S.B. 9250 (requires subsidiaries of the Niagara Frontier transportation authority and their employees to submit all unresolvable contract negotiations to binding arbitration).

*North Carolina**

Bills Enacted: None.

Bills Pending: None.

*North Dakota**

Bills Enacted: None.

Bills Pending: None.

*Ohio**

Bills Enacted: H.B. 4 (requires federally licensed firearms dealers to give each firearm purchaser a specified brochure that provides information on using deadly force and outlines the laws about dispute resolution).

Bills Pending: H.B. 617 (creates the Youth and Family Ombudsman Office and places it under the umbrella of the Department of Job and Family Services).

*Oklahoma**

Bills Enacted: H.B. 3420 (establishes the State Employee Dispute Resolution Program which includes mediation and dispute resolution services for state agencies and state employees); H.B. 3286 (forbids courts from ordering conditions on protective orders that may compromise the safety of the victim such as participation in mediation, parenting classes, or joint victim-offender counseling sessions).

Bills Pending: S.B. 1813 (requires the State Insurance Department to establish a mediation program, procedures for proceedings, qualifications for participating mediators, and circumstances requiring mediation); S.B. 1271 (clarifies information under the Dispute Resolution Act that is exempt from disclosure such as participation in mediation, any proposed settlement agreement, and items agreed upon or disputed). H.B. 3955 (establishes collective bargaining rights of sheriff's employees and directs county authorities and sheriff's department representatives to implement a process for arbitration between departments); H.B. 4206 (creates the State Medical Patient Complaint Ombudsman and places the office under the State Department of Health); H.B. 4395 (creates the Oklahoma Prisoner Reentry Program for certain inmates and provides for transitional support services, including on-call support and conflict resolution services); H.B. 1133 (directs teachers and other instructional staff on managing student behavior and other assistance to improve skills in classroom management, violence prevention, conflict resolution, and other related areas).

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*Oregon**

- Bills Enacted:** H.B. 4045 (distributes funding to nonprofit organizations to provide community violence prevention and intervention services such as legal services and conflict resolution); S.B. 1586 (unrepresented parties participating in mediations stemming from allegations of (1) sexual assault, (2) discrimination, or (3) attempts to secure non-disclosure agreements preventing the report of such crimes in exchange for the retention of one's job, promotion, or compensation, must be provided a copy of the model procedures and policies outlining their rights under U.S. labor standards).
- Bills Pending:** H.B. 4020 (requires construction contractors to request mediation before the Construction Contractors Board before bringing action or pursuing other remedies to collect payment from property owners that unreasonably withhold approval and acceptance).

*Pennsylvania**

- Bills Enacted:** None.
- Bills Pending:** H.B. 2545, 2547-49, 2551 (collection of bills amending an act known as the Policemen and Fireman Bargaining Act, which specifically authorizes collective bargaining between policemen, firemen, and their public employers; provides for arbitration in order to settle disputes, and requires compliance with collective bargaining agreements and findings of arbitrators); H.B. 2545 (amends to provide that if the two arbitrators cannot select a third after ten days, they may request a pool of names from the presiding judge of the county court of common pleas. Outlines guideline qualifications for such a person); H.B. 2547 (amends to provide a list of issues excluded from collective bargaining); H.B. 2548 (amends to outline the procedure the Board of Arbitration shall follow when issuing determinations); H.B. 2549 (amends to provide rules governing the assignment of fees and costs associated with arbitration); H.B. 2551 (amends to provide that absent an exception, all hearings shall be open to the public, all documents and evidence of record subjects shall be subject to disclosure under the Right-to-Know Law, and a stenographic record of the hearing shall be made).

*Rhode Island**

Bills Enacted: None.

Bills Pending: H.B. 7793 (establishes the program of the Alzheimer's disease and related disorders ombudsperson to be administratively attached to the Department of Health (DOH) to assist individuals suffering with Alzheimer's disease and related disorders by advocating on their behalf and coordinating their medical and social services care); H.B. 8259 (amends worker's compensation law to include the procedures for mediation such the apportionment of fees, the assignment of mediators, and the reporting of an impasse); S.B. 2244 (establishes new factors for the Contract Arbitration Board for Municipal Employee Unions to consider when rendering a binding decision on the contract; grants the board power to render an award over all negotiated matters, including the expenditure of money and provides for a review of the arbitration panel's decision, by writ of certiorari to the Supreme Court); S.B. 2409 (requires that if state employee unions are engaged in contract negotiations and/or utilizing the dispute resolution process to adopt a successor contract, all the terms and conditions in the existing collective bargaining agreement shall continue to remain in effect, even after its expiration); S.B. 2416 (amends to provide that all contractual provisions in a firefighters collective bargaining agreement would continue until a successor agreement has been reached or an interest arbitration award has been rendered); S.B. 2417 (amends to extend provisions of an existing collective bargaining agreement for municipal police arbitration purposes until a successor agreement is reached or an interest arbitration award is rendered).

*South Carolina**

Bills Enacted: None.

Bills Pending: None.

South Dakota^{†‡}

Bills Enacted: H.B. 1325 (amends § 10-6-130 to grant the Secretary of Revenue the authority to promulgate rules, pursuant to Chapter 1-26, for providing a process for mediation between a director of equalization and the department regarding disputes of soil classification).

Bills Pending: None.

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Tennessee^{##}

Bills Enacted: S.B. 1661 (amends Tennessee Code Annotated, Title 36, Chapter 4 to authorize a court to allow mediation between parties in a divorce proceeding to occur by video conference when appropriate); and H.B. 1848 (establishes mediation and binding dispute resolution between member states and non-member states relating to the Occupational Therapy Licensure Compact).

Bills Pending: S.B. 0001 (§ 56-33-101 establishes an independent dispute resolution procedure for emergency services and balance bills. § 56-33-103 establishes criteria for independent dispute resolution applicability. § 56-33-104 indicates the criteria for the independent dispute resolution process. § 56-33-105 establishes the criteria for determining a reasonable fee in an independent dispute resolution. § 56-33-106 establishes a procedure for independent dispute resolution for emergency services); and S.B. 2257 (amends Tennessee Code Annotated, Title 29, Chapter 5, Part 3 to make various changes to the Uniform Arbitration Act).

Texas^{##}

Bills Enacted: None.

Bills Pending: None.

Utah^{##}

Bills Enacted: H.B. 249 (§ 30-3-38 amends the Expedited Parent-time Enforcement Program to include mediation procedures for “parent-time” disputes); H.B. 357 (amends § 78B-6-509(3)(b) requiring an appraisal to be obtained within 90 days of mediation or arbitration before making a settlement offer); and S.B. 151 (Article IX § (3)(b) establishes mediation and binding dispute resolution between member states and non-member states relating to the Advanced Practice Registered Nurse Compact).

Bills Pending: None.

Vermont^{##}

Bills Enacted: S.B. 78 (amends Sec.1.3 V.S.A §1018 to include several procedural changes relating to binding interest arbitration for employees of the Vermont Judiciary); and S.B. 72 (amends Sec. 2. 33 V.S.A Chapter 59 §5912(b) establishes mediation and binding dispute resolution between member states and non-member

states relating to the Interstate Compact on the Placement of Children).

Bills Pending: H.B. 536 (§4033, §4039, §4041, §4021, and §4044, grant the power of attorney the authority to submit to alternative dispute resolution).

Virginia^{##}

Bills Enacted: S.B. 113 (requires that the court refer any case in which a grandparent petitions the court for custody or visitation of a minor grandchild to mediation; the bill also requires the petitioning party to pay the fee of the mediator); S.B. 657 (§ 10.1-1186.3 grants additional powers to the Boards and the department of Environmental Quality to employ mediation or an alternative dispute resolution to resolve issues when appropriate); and H.B. 1027 (makes unenforceable a contract between a provider or broker and recipient from that requires face-to-face arbitration proceedings outside the jurisdiction where the recipient's principal place of business is located).

Bills Pending: None.

Washington^{##}

Bills Enacted: H.B. 1688 (§ 11 amends RCW 48.49.040 and 2019 Chapter 427 § 8 to establish guidelines for an independent dispute resolution process for out-of-network providers and patients, to protect consumers from charges of out-of-network health care services); H.B. 1717 (amends RCW 36.70A.040 and 2014 Chapter 147 §1(8)(a) establishes that the department of commerce is to provide mediation services between the city, county and, the tribes affected, to reach an agreement regarding urban growth); and S.B. 5518 (amends Chapter 18.59 RCW to include Article 11 (3)(b), which establishes mediation and binding dispute resolution between member states and non-member states relating to the Occupational Therapy Licensure Compact).

Bills Pending: H.B. 1228 (amends RCW 59.18.200, by including a new section. § 6(1) establishes the duty of the administrative office to create an eviction resolution pilot program to facilitate resolution of non-payment eviction between landlord & tenant through dispute resolution, before landlord files unlawful detainer action to be heard by the court); and H.B. 2088 (establishes foreclosure mediation program for those referred to mediation by a housing counselor or attorney).

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West Virginia^{##}

Bills Enacted: S.B. 463 (amends § 48-9-208 to establish that the court order an Alternative Dispute Resolution method to resolve parental disputes if there is no parental dispute agreement in place. §48-9-208(b) established that the court could order a non-judicial dispute resolution process, however, it is subject to de novo judicial review if there was no prior parental agreement in place); and S.B. 221 (§30-28A-11(c) establishes mediation and binding dispute resolution between member states and non-member states relating to the Occupational Therapy Compact).

Bills Pending: H.B. 2578 (amends the Code of West Virginia, 1931, by adding a new article, designated §55-19-1, §55-19-2, §55-19-3, and §55-19-4, all relating to creating the Alternative Dispute Resolution Act; providing parties to a lawsuit with choices for resolving their dispute that save time and money, when compared to formal court proceedings, by encouraging alternative dispute resolution (ADR) procedures); H.B. 2551 (§46A-6O-9 authorizes the Attorney General to promulgate rules to create a dispute resolution process for third parties involved in warranty disputes between consumer and manufacturer); and H.B. 3124 (amends the Code of West Virginia, § 21-1F-4(5) exempts judicial employees, including arbiters and mediators, from being able to collectively bargain. For other public employees, § 21-1F-8(a) & (b) requires stepped mediation, that is mediation and then, if there still is a dispute, submission to arbitration).

Wisconsin^{##}

Bills Enacted: H.B. 911 (§ 24-102-12(1)(b)(2) permits the licensing department to conduct alternative dispute resolution activities for a case involving an employee who is not represented by an attorney); H.B. 537 (Article XII establishes mediation and binding dispute resolution between member states and non-member states relating to the Psychology Interjurisdictional Compact); and S.B. 412 (§ 20, Subchapter XI, §§ 11 establishes mediation and binding dispute resolution between member states and non-member states relating to the Occupational Therapy Licensure Compact).

Bills Pending: None.

Wyoming^{##}

Bills Enacted: H.B. 53 (§ 27-9-104(a)(v) grants the department of employment the power to issue subpoenas for purposes of mediation); and H.B. 117 (establishes mediation and binding dispute resolution between member states and non-member states relating to the Occupational Therapy Licensure Compact).

Bills Pending: None.

Federal^{##}

Bills Enacted: H.R. 4445 “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021” (amends Title 9 of the U.S. Code to invalidate pre-dispute arbitration agreements and pre-dispute joint-action waivers with respect to legal claims involving sexual assault or sexual harassment).³⁵⁰

Bills Pending: H.R. 963 “Forced Arbitration Injustice Repeal Act” (prohibits a pre-dispute arbitration agreement from being valid or enforceable if it requires arbitration of an employment, consumer, anti-trust, or civil rights dispute).

³⁵⁰ See also Joshi, *supra* note 155.