State Legislative Update

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I. STATE LEGISLATIVE FOCUS

A. Optional Provisions in the Uniform Mediation Act: Introduced in Connecticut¹, District of Columbia², Indiana³, Iowa⁴, Massachusetts⁵, Minnesota⁶, New York⁷, Vermont⁸, and Washington⁹.

Bill Numbers: Connecticut Senate Bill 1363, District of Columbia Legislative Bill 145, Indiana Senate Bill 4, Iowa Senate File 323, Massachusetts House Bill 19, Minnesota Senate File 1478, New York Senate Bill 1527, Vermont House Bill 33, Washington Senate Bill 5173.

Summary: These bills adopt the Uniform Mediation Act, which primarily promotes confidentiality in mediations by creating a special evidentiary privilege for participants and facilitators of mediations. The Act includes several optional provisions, allowing states to choose which provision to enact. This article discusses the optional provisions providing for mediator impartiality and the exception to privilege when child abuse or neglect is present.

⁶ S.F. 1478, 84th Reg. Sess. (Minn. 2005), available online at http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1159.0&session=ls84.

* The State Legislative Update is an annual article appearing in the fall edition of the Journal of Dispute resolution and is compiled and written by selected Journal members. It is designed to provide readers with a listing of pertinent legislation affecting alternative dispute resolution. The update also provides a more detailed look at certain bills due to their importance and/or novelty within the ADR field. If you have comments or suggestions about this feature, please feel free to email the Journal of Dispute Resolution editorial board at umclawjournal@missouri.edu.
1. Introduction

As a response to a growing number of states enacting legislation regarding mediations\footnote{Prior to the creation of the UMA it is estimated that over 2,500 state statutes regarding mediation existed nationwide. See Ronald J. Hedges, Civil Practice and Litigation Techniques in Federal and State Courts: Mediation Developments and Trends, American Law Institute: American Bar Association Continuing Legal Education, January 19-21, 2005 (I don't really know how to cite this, but the Westlaw citation is: SK042 ALI-ABA 1485).}, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Dispute Resolution section of the American Bar Association, drafted the Uniform Mediation Act (UMA).\footnote{A full text version of the UMA is available online at www.law.upenn.edu/bll/ulc/mediat/UMA2001.htm.} The goal of the drafters in creating the UMA was to promote uniformity in an area of law that varied greatly from state to state.\footnote{See Paul Dayton Johnson, Jr. Confidentiality in Mediation: What Can Florida Glean from the Uniform Mediation Act?, 30 FLA.ST.U.L.REv. 487, 491 (2003). In drafting the UMA, the NCCUSL took the same approach as to all uniform laws, applying a generic approach to topics that are covered in many different ways by state legislation. Id. at 488. The idea is that making rules which are as predictable and simple as possible will prompt state legislatures to adopt the act. Id. at 491.} After observing the approach of several states\footnote{See UMA, supra note 11, § 9. In general, section 9 requires that before accepting a mediation, a mediator must make a reasonable inquiry into the circumstances surrounding an upcoming mediation to search for any conflicts of interest. If the mediator discovers any facts that may affect the impartial-}, the drafters chose to place a broad confidentiality privilege for all mediation participants at the heart of the Act.\footnote{See UMA, supra note 11, § 4. The general privilege is provided for in § 4 of the UMA and reads as follows: (a) Except as otherwise provided in Section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5. (b) In a proceeding, the following privileges apply: (1) A mediation party may refuse to disclose a mediation communication, and may prevent any other person from disclosing, a mediation communication. (2) A mediator may refuse to disclose, and may prevent any other person from disclosing a mediation communication of the mediator. (3) A non party participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the non party participant.} In addition, the UMA requires the mediator to make special disclosures regarding any potential conflicts of interest the mediator may have in the dispute, in order to help enhance both parties awareness of the mediator's ability to act impartially.\footnote{In general, section 9 requires that before accepting a mediation, a mediator must make a reasonable inquiry into the circumstances surrounding an upcoming mediation to search for any conflicts of interest. If the mediator discovers any facts that may affect the impartial-}
While the main purpose of the UMA is to create uniformity in mediation legislation, the drafters left several provisions as optional, or gave alternative language to be adopted, allowing states some flexibility while retaining the general purpose of the Act. Section 9(g) of the UMA allows states to choose whether a mediator must be impartial, unless stipulated by the parties involved. In addition, section 6(a)(7), which creates an exception to the broad privilege for communications evidencing the abuse of a minor or other vulnerable parties, gives states two very specific options allowing each state to control the scope of the exception. This article considers these two optional provisions in light of the eight states, and the District of Columbia, who are currently considering the UMA. The lack of uniformity represented by the way these states have treated the optional provisions illustrates why the drafters chose to allow flexibility in these areas.

2. Optional Section 9(g): Mediator Impartiality

Section 9 of the UMA prescribes what information regarding any conflicts of interest and the mediator’s background that the mediator must disclose prior to accepting a mediation. Mediator impartiality is an important focus of section 9, as the provision requires a mediator to disclose all relevant facts to the parties involved in the mediation that might reveal a potential conflict of interest. The drafters clearly wanted to protect parties to a mediation from being subject to an impartial mediator without their knowledge.

16. See Richard C. Reuben, The Sound of Dust Settling: A Response to Criticisms of the UMA, 2003 J. Disp. Resol. 99, 126 (2003). Professor Reuben notes that the UMA “drafted as a floor, rather than a ceiling” giving the states a minimum level of protection. Id. at 127. The optional provisions ensure the sovereignty of state legislatures over their mediation statutes and by giving them choices on several provisions including: whether to place an affirmative duty of confidentiality on non proceeding disclosures, whether to expand the definition of mediation communications to include a mediation participants mental impressions and observations, which current statutes will be repealed upon the adoption of the UMA, the optional requirement of mediator impartiality, and the scope of the exception from the general privilege for statements that evidence abuse of a vulnerable party. Id. at 127-32.

17. See UMA, supra note 11, § 9.
18. See UMA, supra note 11, § 6(a)(7).
19. See supra notes 1-9 for states currently considering the UMA.
20. See UMA, supra note 11, § 9 and following drafters comments on § 9.
21. See UMA, supra note 11, § 9(a)(1).
22. See Monica Rausch, Recent Development: The Uniform Mediation Act, 18 Ohio St. J. On Disp. Resol. 603, 614 (2003). The author notes that the provisions in section 9 of the UMA are intended to allow a party to have enough information to decide whether they want to proceed with a potentially biased mediator. See also Comment 1, supra note 11, § 9 (noting that the disclosure requirements of section 9 provide legislative support for professional standards that already exist in the rules set forth by many organizations including: American Arbitration Association, American Bar Association, and Society of Professionals in Dispute Resolution, Model Standards of Conduct for Mediators, Standard III (1995); Model Standards of Practice for Family and Divorce Mediation, Standard IV (2001); National Standards for Court-Connected Mediation Programs, Standard 8.1(b)(1992); Revised Uniform Arbitration Act (2000), Section 12; Codes of Professional Responsibility for Arbitrators of Labor-Management Disputes, Section 2(B)(1985)).
While impartiality is an important aspect of section 9, the drafters ultimately chose to exclude impartiality as a requirement to be a mediator under the Act.\(^{23}\) The overwhelming majority of dispute resolution professionals were concerned that enshrining impartiality as black letter law would open a mediator up to challenges by disgruntled parties who were not satisfied with the deal that was struck in the mediation.\(^{24}\) In addition, the drafters believed that in certain situations, a slightly partial mediator may be the best individual to facilitate the dispute. For example, a mediator who has a prior relationship with one of the parties is preferred over one who fails to obtain the mutual respect of the parties.\(^{25}\) There are also situations where it may be necessary for a mediator to advocate on behalf of a particular party, such as an ombuds in the health care context, and domestic relations mediators who are charged by law to protect the interests of children.\(^{26}\) Instead of forcing a requirement, the drafting committee chose to prevent an impartial mediator from invoking the broad legal privilege in section 4 of the UMA,\(^{27}\) and provided suggested language in section 9(g) for those states who wanted to include the impartiality requirement.\(^{28}\)

While many organizations supported the final draft of the UMA,\(^{29}\) the absence of the impartiality requirement did not go without criticism. The Association for Conflict Resolution (ACR) only gave the UMA provisional support once section 9(g) was drafted as an optional provision.\(^{30}\) ACR feared that the lack of the requirement could lead to a feeling among mediators that impartiality is not necessary, and allow mediation participants to believe that they do not have a right to an impartial mediator.\(^{31}\) ACR also noted that in those states who currently require mediator impartiality, there has not been an overwhelming amount of claims against the mediator by disgruntled parties who are dissatisfied with the result of a mediation.\(^{32}\) Other organizations, such as the International Academy of Mediators (IAM), initially pulled their support from the UMA because they felt that including the provision as optional was too strong, and recommended that


\(^{24}\) See Reuben, supra note 16, at 130-31.

\(^{25}\) Id.

\(^{26}\) Id.

\(^{27}\) See UMA, supra note 14 and accompanying text of § 4.

\(^{28}\) See Reuben, supra note 16, at 131; See also UMA, supra note 11 § 9(g), text for the optional mediator impartiality language is provided in brackets at the end of section 9 and reads as follows: [\{(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.\}]

\(^{29}\) See Reuben, supra note 16. Author notes that the UMA received overwhelming support by the ABA, National Conference of Commissioners on Uniform State Laws, Association of Family and Dependency Courts, The Ombudsman Association, most major dispute resolution professional organizations and service providers, and most dispute resolution scholars. See also A Few Facts About the Uniform Mediation Act, Website of Uniform Law Commissioners, available at www.ncusl.org/ncusl/uniformact_factsheets/uniformacts-fs-uma2001.asp, citing the Judicial Arbitration Mediation Service and the CPR Institute as additional supporters of the UMA.


\(^{31}\) Id.

\(^{32}\) Id.
even the optional language be removed from the draft to further protect mediators.\textsuperscript{33}

The disagreement regarding the inclusion of the mediator impartiality clause is not absent in states now considering the UMA. Of the nine states in which the UMA was introduced in 2005, seven states\textsuperscript{34} including Connecticut, Vermont, Minnesota, Massachusetts, Iowa, Indiana, and the District of Columbia have chosen to include section 9(g) in their versions of the UMA.\textsuperscript{35} Both Washington and New York have introduced UMA bills that do not include the provision.\textsuperscript{36} Even among those states adopting the UMA in 2005, there fails to be a consensus. Iowa, whom passed the Act in April, chose to include the provision, while Washington opted to exclude it when adopting the Act that same month.\textsuperscript{37} Both bills passed their respective legislatures with limited opposition, voted unanimously in all houses accept for one nay vote in the Washington Senate.\textsuperscript{38} It should be noted that Washington is the only state to date that has passed a UMA bill excluding the impartiality provision. Prior to 2005, four states including Ohio, Illinois, New Jersey, and Nebraska have all passed UMA bills including the provision.\textsuperscript{39}

After much initial debate among academics, it appears that the impartiality choice has been made quietly by states proposing the Act, with little opposition. While states have thus far primarily sided with ACR’s view that a mediator must remain impartial\textsuperscript{40}, Washington’s adoption without contest seems to reveal that the drafters may have correctly foreseen that some states would rather decide for themselves. The recent state drafts and adoptions may dull a debate that was once sharp with divergent opinions, and allow the UMA to more smoothly transform from a theoretical agent, into a representation of actual nationwide uniformity.

\begin{itemize}
\item \textsuperscript{33} See Getty, supra note 23. See also Steven H. Schwartz. \textit{International Academy of Mediators Oppose the Uniform Mediation Act}, President of IAM Board of Governors letter to Richard Reuben dated December 24, 2001, available online at http://www.mediate.com/articles/umaiam.cfm#1. The IAM not only opposes the optional impartiality clause, but additionally fought against the disclosure requirements of § 9(a). The association deemed the entirety of § 9 a “radical” provision, allowing litigators to initiate a “fishing expedition” to find out if the mediator actually disclosed all potential conflicts. Id.
\item \textsuperscript{34} For purposes of this article, the District of Columbia is included when referring to “states” now considering adoption of the UMA.
\item \textsuperscript{35} See S.B. 1363, supra note 1, § (9)(g); H.B. 33, supra note 8, §5718(1); S.F. 1478, supra note 6, § (9)(g); H.B. 19, supra note 5, § (9)(g); S.F. 323, supra note 4, § (14)(7); S.B. 4, supra note 3, § (9)(g); L.B. 145, supra note 2, § 16-5108(g).
\item \textsuperscript{36} See S.B. 1527, supra note 5, § 7408; S.B. 5173, supra note 9, § 9.
\item \textsuperscript{37} See S.B. 5173, Washington bill status, available at http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5173&year=2005. The Washington bill passed the house and senate with only one nay vote. During testimony in the Senate Judiciary Committee, no parties spoke out in opposition to the bill while seven organizations and individuals spoke in favor of the bill including: Marlin Appelwick, Washington Uniform Legislation Commission; Alan Kirtley, University of Washington School of Law; Philip Cutler, Washington State Bar Association, Alternative Dispute Resolution Roundtable; Susan Slagle, American Arbitration Association; Evan Ferber, Resolution Washington, Association of Washington State Dispute Resolution Centers. Id. See also S.F. 323, Iowa bill tracking, available at http://www.legis.state.ia.us/aspx/Cool-ICE/DisplayBills.htm. The Iowa bill passed the Senate with a vote of 50 yeas, 0 nays, and passed the House with a vote of 100 yeas, and 0 nays. Id.
\item \textsuperscript{38} Id.
\item \textsuperscript{39} See OHIO REV. CODE ANN. § 2710.08 (2005); 2005 ILL. COMP. STAT. 35/9; N.J. STAT. ANN § 2A:23C-8(2004); NEB. REV. STAT. § 25-2938 (2005).
\item \textsuperscript{40} See supra note 35 and 39.
\end{itemize}

In addition to including the broad evidentiary privilege in section 4\textsuperscript{41} of the UMA, the drafters proposed several exceptions where participants of a mediation would not be able to invoke an evidentiary privilege regarding mediation communications.\textsuperscript{42} Included in these exceptions are communications that evidence abuse and neglect of vulnerable parties, including children, and disabled or elderly individuals.\textsuperscript{43} While no privilege is generally granted in such situations under section 6, subsection (a)(7)\textsuperscript{44} provides for an exception to the exception, for certain situations where public policy supports sustaining the section 4 privilege even when evidence of child abuse or neglect is present.\textsuperscript{45}

An exception for child abuse and neglect is quite common in many mediation confidentiality statutes as is reflected by numerous state statutes.\textsuperscript{46} The drafters accordingly created the exception to reaffirm the policy decisions previously made in these states.\textsuperscript{47} Opponents to this exception were concerned that in many states where mediation programs have been established by child protection agencies, families would be less likely to use these services to resolve family issues, in fear that there words would later be used against them.\textsuperscript{48} For instance, a family member who knows the alleged abuse will likely surface in the mediation will be less likely to participate, because if the mediation fails, these statements could be used against them in a child abuse proceeding down the road.\textsuperscript{49}

To resolve this issue, the drafters created two alternatives, allowing the states to tailor the scope of the exception, depending upon the skill and experience of the states' court related programs that recommend mediation for family law conflicts.\textsuperscript{50} Alternative A\textsuperscript{51} is the more limited exception. Under this alternative the evidentiary privilege will apply only when a state agency (Dept. of Family Services, etc.) is a party to the dispute and the parties have been sent to mediation by some court related mediation program.\textsuperscript{52} This will generally apply when allega-

\textsuperscript{41} See UMA, supra note 14 and accompanying text.
\textsuperscript{42} See UMA, supra note 11, 6 and cmts. to § 6.
\textsuperscript{43} Id. at §6(a)(7) and §6 cmt. 8.
\textsuperscript{44} Id. Section 6(a)(7) reads as follows:
(a) There is no privilege under section 4 for a mediation communication that is:
(7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult services agency is a party, unless the
[Alternative A: [State to insert, for example, child or adult protection] case is referred by a
court to mediation and a public agency participates.]
[Alternative B: public agency participates in the [State to insert, for example, child or adult
protection] mediation.].
\textsuperscript{45} Id; See also Michael Theadore Bigos. Maine Considers the Uniform Mediation Act, 18 ME. B. J. 222, 227 (2003).
\textsuperscript{46} See UMA, supra note 11, § 6, cmt. 8. The comments to §6 of the UMA lists a number of state statutes that provide for an exception to mediation confidentiality when evidence of child abuse and neglect is present.
\textsuperscript{47} Id.
\textsuperscript{48} Id. See also Reuben, supra note 16, at 132.
\textsuperscript{49} Reuben, supra note 16, at 132.
\textsuperscript{50} Id.
\textsuperscript{51} See supra note 44 for full text of Alternative A.
\textsuperscript{52} Reuben, supra note 16, at 132-33.
tions of abuse or neglect have already been made in an official context, and the court has decided that mediation is in the best interest of the parties. 53

Alternative B 54 creates a broader privilege, which is triggered anytime a state agency is a party to the suit, without a need for a court referral. 55 States adopting this policy usually hold a higher respect for the public agency involved in the dispute, believing that the privilege should apply by the mere fact that the state agency believes the dispute is ripe for mediation. 56

States who have introduced the UMA in 2005 have taken advantage of the optional provision, and are split on which provision best serves their purposes. Of nine states considering the UMA in 2005, five states including Iowa, Massachusetts, Minnesota, Vermont, and the District of Columbia included alternative A, requiring both a court referral and a state agency as a party to the dispute for the privilege to apply to communications evidencing abuse or neglect of a vulnerable party. 57 Four states including New York, Washington, Indiana, and Connecticut, chose Alternative B, only requiring that a state agency be a party to the dispute for the privilege to apply. 58 Just as the two states that adopted the UMA in 2005 did not agree of the application of optional provision 9(g) 59, Washington and Iowa chose different alternatives when drafting section 6(a)(7). 60 Representing the strong presence of the mediation programs instituted by Washington’s child protection agencies, Washington adopted provision B, not requiring a court ordered mediation for the privilege to apply. 61 Family mediation programs in Iowa, on the other hand, are set up and supervised by the judicial system, not a state agency. 62 Iowa’s draft of the UMA included Alternative A, requiring that the mediation be ordered by a court, in order to avoid conflict with current state law.

4. Conclusion

While the main goal of the UMA was to create a uniform system of laws allowing mediation participants security in the confidentiality of the mediation

53. See UMA, supra note 11 § 6, cmt. 8.
54. See supra note 44 for full text of Alternative B.
55. Reuben, supra note 16 at 133; See also supra note 11 § 6, Comment 8.
56. See UMA, supra note 11 § 6, cmt. 8.
57. See S.F. 323 supra note 4, at §11(1)(g); H.B. 19 supra note 5, at §6(a)(7); S.F. 1478 supra note 6, at §6(a)(7); H.B. 33 supra note 8, at § 5717(a)(5); L.B. 145 supra note 2, at § 16-5105(a)(7).
58. See S.B. 1527, supra note 7 at § 7405(7); S.B. 5173, supra note 9, at § 6(g); S.B. 4, supra note 3, at § 6(a)(7); S.B. 1363, supra note 1, at 6(a)(7).
59. See discussion of Iowa and Washington passing different versions of § 9(g), supra note 37.
60. See S.F. 323, supra note 4 § 11(1)(g); S.B. 5173, supra note 9 § 6(g).
61. See WASH. REV. CODE. § 26.09.015 (1999). In Washington, any dispute may be set for mediation, and some local rules require mediation of all such disputes. See Carrie A. Tondo, Rinarisa Cornel, and Bethany Drucker. Mediation Trends: A Survey of the States, 29 Fam. Ct Rev. 431, 445 (2001). Both the court and the state mental health agencies oversee the family mediation system, as mediators may be members of either the Family Court professional staff, or the proper state agency. Id.
62. See Iowa Code § 598.7 (2005). The Iowa statute requires a court order for mediation of any divorce or domestic dispute, in which the parties may select any mediator they wish. However, § 598.7 may not be in line with UMA § 6(a)(7), as the Iowa family mediation statute does not apply to disputes involving domestic abuse, thus communications evidencing abuse or neglect of a vulnerable party may not be a subject in which the court can order to mediation. See also Tondo, supra note 61 at 437.
process and the ability of the mediator to act fairly in reaching a resolution to dispute\textsuperscript{63}, the drafters of the UMA realized that the utility of the Act would be minimized if few states adopted it.\textsuperscript{64} The creation of many optional provisions to combat this effect has allowed states to take advantage of the years of work and research performed by the drafters, while still making the UMA their own. The split among states considering the UMA regarding some of these optional provisions represents that the drafters were correct in predicting that not all states would agree on certain provisions, such as the impartial mediator requirement, and that the administrative framework in some states would require more statutory direction than others, as in the options set forth in section 6(a)(7). The future success of the UMA may very likely rely on the existence of these optional provisions. While these provisions may not represent intensely debated mainstream policy issues, the ability to get around squabbles among scholars and practitioners by creating optional provisions paves a smoother path for the UMA to travel in reaching the goal of national acceptance.

B. State Implementation of ADR at the Local Level to Resolve Disputes Over Special Education: California Senate Bill 605\textsuperscript{65}

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<th>Bill Number:</th>
<th>California Senate Bill 605</th>
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<tbody>
<tr>
<td>Summary:</td>
<td>This bill would require the California Department of Education (CDE) to administer a grant program for alternative dispute resolution (ADR) to resolve disputes between parents and providers of special education at a local level.</td>
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<tr>
<td>Status:</td>
<td>As of April 28, 2005, held in committee without recommendation</td>
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1. Introduction

California Senate Bill 605, introduced on February 18, 2005, would require the CDE to establish and administer a statewide program to provide grant funding to special education local plan areas (SELPAs) to establish ADR programs.\textsuperscript{66} The use of SELPAs to administer the ADR programs is designed to expand the use of ADR in California in the resolution of disputes arising between parents and pro-

\textsuperscript{63}. See Johnson, supra note 12, at 491-95.

\textsuperscript{64}. See UMA, supra note 11, at Prefatory Notes.


\textsuperscript{66}. Id. In 1977, all California school districts and county school offices were required to join to form geographical regions of sufficient size and scope in order to provide the federally mandated special education programs and services to meet the needs of children residing within the region's boundaries. Available at http://www.icoe.k12.ca.us/ICOE/Departments/SELPAs/. There are approximately 100 SELPAs in California and each one has developed and maintains a local plan describing how the SELPA would guarantee and provide special education programs and services. Id. See also http://www.monterey.k12.ca.us/selpa/
State Legislative Update

providers of special education. Currently, the only statewide mediation process available to parents and local educational agencies in California is a prehearing mediation conference which is conducted at the state level which may be obtained after a request for a due process hearing has been filed. By expanding the use of ADR to resolve disputes arising over issues relating to special education, the bill’s sponsor believes that both the recipients and the state would benefit.

2. The Bill

In California, a limited number of SELPAs have implemented an alternative dispute resolution process that has successfully resolved disputes at the local level. By resolving disputes in this manner, the amount and cost of litigation and complaint investigation has been reduced at the state level. California Senate Bill 605 is an effort to implement this structure of dispute resolution on a statewide basis.

Under Senate Bill 605, the CDE would be required to establish and administer a statewide program to provide grant funding to local SELPAs to establish ADR programs for special education. The programs established by the CDE would include the following: (1) an advisory board that includes representatives from local alternative dispute resolution projects to ensure ongoing communication, (2) an annual statewide conference for all implementers of alternative dispute resolution programs, (3) criteria for awarding grants, funding, data collection, and evaluating alternative dispute resolution projects, (4) the selection of recipients and allocation of funding, and (5) the selection of individuals to serve as mentors to support implementers.

The bill’s sponsor believes that expanding the use of ADR through the utilization of SELPAs will produce benefits both for the children with disabilities and for the state as a whole. Specifically, the bill’s sponsor believes that S.B. 605 will enable children with disabilities to receive more appropriate care, to receive those services more expeditiously, and to have their disputes resolved in a cost-effective manner. In addition to providing a more satisfactory means for recipients, the bill’s sponsor seems to believe that utilization of SELPAs to increase the use of ADR will also result in cost savings for the state.

69. *Id.* See also S.B. 605, Bill Analysis. CDE is currently administering an ADR grant program for the resolution of special education disputes, but it does not serve every area of the state. *Id.* S.B. 605 would enable SELPAs to implement their own programs, thereby providing the opportunity for all areas of the state to be served. *Id.* 20 SELPAs are participating in the current grant program administered by CDE. *Id.* CDE is in the process of evaluating this grant program and it has not yet been conclusively determined whether the ADR programs operated in the SELPAs are effective and efficient. *Id.*
71 *Id.*
72. *Id.* at § 2.
73 *Id.*
74. *Id.* at § 1.
75. S.B. 605, Bill Analysis, page 4. Staff members of the Senate Committee on Education note that the CDE is in the process of evaluating the effectiveness and efficiency of the 20 SELPAs who are
According to S.B.605, the intent of the measure is to do the following: (1) to establish new options for alternative dispute resolution at the local level through coordination by the SELPA system or collaboration of multiple SELPAs, (2) to ensure that these new options do not interfere with the parent's right, under state and federal law, to pursue other options at the state level, but work in conjunction with these options to provide a greater variety of options to the parent, (3) to establish a program with funding to support the development and implementation of alternative dispute resolution in each SELPA throughout the state, and (4) to establish a mentorship program to help guide SELPAs in implementing new alternative dispute resolution programs.76

C. Illinois Senate Bill 1846: Arbitrator Immunity

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<th>Bill Number:</th>
<th>Illinois Senate Bill 1846</th>
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<td>Summary:</td>
<td>The bill amends the Uniform Arbitration Act to provide for the immunity of arbitrators and to make them incompetent to testify.</td>
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<td>Status:</td>
<td>Currently the bill is in the Illinois Senate Rules Committee.</td>
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1. Introduction

Even though an arbitrator serves many of the functions that a judge does, the arbitrator does not enjoy many of the same protections. Illinois Senate Bill 1846 attempts to change this in several ways, most importantly with respect to the extent to which arbitrators can be called to divulge the contents of the arbitration. The bill also provides for arbitrator immunity from civil lawsuits.

House Bill 1846 was introduced on February 25, 2005 at which point it was referred to the Rules Committee.77 It was then assigned to the Judiciary Committee on March 2.78 After an amendment, the bill passed the Judiciary Committee on March 16 and was then placed on the Senate’s calendar.79 The bill was then re-referred to the Rules Committee for further proceedings on May 10.80 No action has been taken on the bill since.81

2. The Bill

The bill is very straightforward. It provides that an arbitrator acting in that capacity is immune from civil liability to the same degree that a state court judge hearing the case would be immune.82 This immunity supplants any immunity currently participating in the CDE’s grant program. Because this evaluation is not yet complete, certain staff members advise that it may be prudent to wait for the results before expanding the program.

78. Id.
79. Id.
80. Id.
81. Id.
provided for under any other law. Perhaps more importantly, the act also provides that an arbitrator is incompetent to testify in any judicial, administrative, or similar proceeding and may not be required to produce records in relation to any statement, conduct, or decision that occurred during the arbitration proceeding to the same extent that a state court judge is immune from the same. This section does not apply to the extent necessary to determine the claim of an arbitrator against a party to the arbitration proceeding or to a hearing to vacate the award where one of the parties has made a prima facie case for throwing out the arbitrator’s decision. Should a party file a suit against an arbitrator or seek to compel the arbitrator’s testimony in violation of these provisions, as determined by the court, then the arbitrator is entitled to attorney’s fees and other reasonable fees of litigation. In committee, the bill was also amended to provide that if the arbitrator fails to make a disclosure required by law, immunity is not lost.

3. Conclusion

This bill is firmly rooted in the movement to provide arbitration with as much of the legitimacy of the court system as possible as well as to make the process as efficient as possible. The bill seeks to accomplish this through providing the arbitrator much of the protection that the judge has and discouraging challenges to the decision the arbitrator makes.

D. Family Law Arbitration: Indiana Senate Bill 8

Bill Number: Indiana Senate Bill 8
Summary: This bill creates a system of arbitration for family law cases.
Status: Signed by Governor, May 4, 2005

1. Introduction

The growing number of cases involving dissolution and child custody requires the judiciary to devote increased resources to resolve these disputes. However, because of limited resources, these cases often take years to complete and cause great strain for many families forced to endure this strain in their attempts to put their lives back in order. In an attempt to alleviate these problems, the Indiana legislature has developed a system of family law arbitration by which parties can attempt to resolve their differences both more efficiently and amicably.

Senate Bill 8, or the Family Law Arbitration Act, was introduced in the Indiana Senate on January 4, 2005. It was referred to the Judiciary Committee,
where it was promptly passed with only one minor change on January 13.\textsuperscript{90} Upon reaching the full Senate, it was also quickly passed by a 41-1 vote, on January 20.\textsuperscript{91} It was then referred to the House, where the Judiciary Committee made an important change, providing for a family law arbitration pilot project to be introduced in one county in Indiana, rather than for the law to immediately go into affect everywhere.\textsuperscript{92} This amendment, as well as a more minor change requiring the mediators to take oaths, also passed on April 7.\textsuperscript{93} The entire House then approved the amended bill by a 94-0 vote on April 11.\textsuperscript{94} The Senate dissented from the House's amendments, and a conference committee was appointed.\textsuperscript{95} In the negotiations, the pilot project amendment was scrapped.\textsuperscript{96} The conference committee report was then agreed upon by the Senate with a 49-0 vote and by the House with a 90-3 vote, both on April 28.\textsuperscript{97} The bill was signed by Governor Daniels on May 4.\textsuperscript{98}

2. The Bill

Senate Bill 8 outlines the process by which parties may agree to have a family law dispute decided in arbitration rather than through the typical process of litigation. First, several requirements must be met before an action may be referred to an arbitrator. In order to be considered within the scope of the bill, the action must be for the dissolution of a marriage; to establish child custody, support, or parenting time; or to modify an order under Indiana Code Title 31, which includes all matters pertaining to family and juvenile law.\textsuperscript{99} Also, both parties must be represented by counsel or be representing themselves to agree to arbitration.\textsuperscript{100} In such cases, both parties must agree in writing to submit the case to arbitration; both parties must agree if they wish to revoke the agreement.\textsuperscript{101} The parties may either agree upon an arbitrator or have the court select three, from which each party will eliminate one arbitrator, leaving the arbitrator selected.\textsuperscript{102}

The statutory language provides some guidance to the arbitrator. First, the arbitrator must follow the child support and parenting time guidelines adopted by the Indiana Supreme Court.\textsuperscript{103} Second, in dissolution cases, the arbitrator must divide the parties property in a just and reasonable manner, whether owned by

\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} S.B. 8, Bill History, \textit{available at} http://www.in.gov/legislative/bills/2005/HAMP/MO000804.001.html (last visited December 7, 2005).
\textsuperscript{93} S.B. 8, Bill History, \textit{supra} note 89.
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{97} S.B. 8, Bill History, \textit{supra} note 89.
\textsuperscript{98} Id.
\textsuperscript{99} IND. CODE § 34-57-5-2(a) (2005).
\textsuperscript{100} Id. § 34-57-5-1.
\textsuperscript{101} Id. § 34-57-5-2, 3.
\textsuperscript{102} Id. § 34-57-5-2(d).
\textsuperscript{103} Id. § 34-57-5-5(a).
either party before the marriage, whether obtained by either in his or her own right or whether obtained by joint effort. To accomplish this, the arbitrator may divide the property in kind, give property to one party and ordering that party to pay the other for it, order the sale of property with the division of the proceeds, or provide for maintenance. The division of the property must meet the standards that would apply had the case been decided by the court.

Other requirements in the statute are meant to ensure that the process is both efficient and fair. Each party is entitled to have a record of the hearing before the arbitrator. The arbitrator must make written findings of fact and conclusions of law within 30 days of this hearing, with a possible extension to 90 days if both parties agree. These findings must be given to both parties and the court; after the court receives them, it is to enter the judgment. While this time table is certainly much quicker than a normal dissolution proceeding, the statute also provides for a summary dissolution decree, in which the arbitrator may provide that there are no contested issues or resolve any contested issues, so long as both parties have waived their right to a hearing. The decision is open to modification only in the cases of fraud by one of the parties, a court order, or the consent of the parties. Appeal from any of these decisions may be taken just as if it had been decided by the court. The arbitrator’s fees are to be shared equally by the parties unless they agree otherwise.

3. Conclusion

Given the time and resources courts must devote to family law issues, the Family Law Arbitration Act has the potential to greatly improve the efficiency of the Indiana judiciary. Cases where little is in dispute can be resolved far more quickly. Adequate safeguards, such as the program’s voluntary nature, are built into the system so that disputed cases which are submitted to the arbitrators are resolved more quickly as well. The system’s plusses make it very likely that people in Indiana will be able to settle family law matters much more quickly than other states and will be able to do so with confidence in the result.

E. Clerk of Court Has Authority to Order Mediation: North Carolina House Bill 1015

Bill Number: North Carolina House Bill 1015

104. Id. § 34-57-5-8(a)(2), (1).
105. Id. § 34-57-5-8(a)(2)(A), (B), (C), (D).
106. Id. § 34-57-5-8(b).
107. Id. § 34-57-5-6(a).
108. Id. § 34-57-5-7(a), (b).
109. Id. § 34-57-5-7(c), (d).
110. Id. § 34-57-5-9.
111. Id. § 34-57-5-10.
112. Id. § 34-57-5-11.
113. Id. § 34-57-5-12.
Summary: Clerk of Superior Court in the General Court of Justice has the discretion and authority to order that mediation be conducted in matters within the clerk’s jurisdiction.

Status: Signed by Governor, May 27, 2005

1. Introduction

Allowing the Clerk of the Superior Court in the General Court of Justice to order mediation facilitates a more economical, efficient, and satisfactory resolution to the matters the mediation is ordered. In fact, it has been noted that the use of alternative dispute resolution, such as mediation, helps businesses have a competitive edge.114 By allowing the Clerk to order mediation, North Carolina has ensured that the courts in North Carolina will be able to run more efficiently.

House Bill 1015 was filed on March 30, 2005.115 The primary sponsor of the bill was Representative Mary Katherine Hackney.116 It was referred to the House Committee on Judiciary on March 31, 2005, and received a favorable report from the Committee on April 21, 2005.117 On April 26, 2005, it was placed on the calendar for vote on April 27, 2005.118 On April 27, 2005, after minimal amendments,119 House Bill 1015 was passed by the North Carolina House by a vote of 113-0.120

On May 2, 2005, House Bill 1015 was received by the Senate and referred to the Senate Committee on Judiciary.121 On May 18, 2005, it received a favorable report from the Committee and on May 19, 2005, passed in the Senate by a vote of 47-0.122

Prior to the Senate receiving House Bill 1015, an identical bill, Senate Bill 805, had been filed on March 22, 2005.123 On March 23, 2005, Senate Bill 805 had been referred to the Senate Committee on Judiciary and had received a favorable report from the Committee on May 12, 2005.124 However, after being placed on the Senate calendar for May 16, 18, and 25, and withdrawn each time, it was re-referred to the Senate Committee on Judiciary.125

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116. Id. at Sponsors.
117. Id. at History.
118. Id.
119. There four different versions of the bill: the version filed; Edition 1; Edition 2 and the ratified version that became Session Law 2005-67. Id. at Text. However, the only difference between the version introduced and the version ratified is that in the ratified version, the amendment to § 35A-116 was designated "(c1)" and in the introduced version it was designated "(d)." Id.
120. Id. at Vote History.
121. Id. at History.
122. Id. at History, Vote History.
124. Id.
125. Id.
On May 23, 2005, House Bill 1015 was ratified by the House and presented to the Governor on May 24, 2005. On May 27, 2005 House Bill 1015 was signed into law by Governor Michael F. Easley. House Bill 1015 was also signed by the President Pro Tempore of the Senate, Marc Basnight and the Speaker of the House of Representatives, James B. Black.

2. The Bill

Chapter 7A of the North Carolina Statutes sets forth the Judicial Power and Organization of the Judiciary of North Carolina. Prior to the enactment of House Bill 1015, Chapter 7A of the North Carolina Statutes allowed for mediation of disputes, but had not given the Clerk the power to order mediation.

House Bill 1015, renamed Session Law 2005-67 after it was adopted, amends Article 5 of Chapter 7A by adding “§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.” Section 5 of House Bill 1015 declared that the new act would be effective when it became law and would apply to all matters pending before a clerk of superior court on, or filed with the clerk after, the date that the Supreme Court adopted rules implementing the new act.

Subsection (a) of House Bill 1015 states that the purpose of the bill was that by giving the Clerk of Superior Court in the General Court of Justice the discretion and authority to order mediation of matters that are within the clerk’s jurisdiction, it would “facilitate a more economical, efficient, and satisfactory resolution of those matters.” Subsection (b) defined the matters in which the Clerk may order mediation: any matter in which the clerk has exclusive jurisdiction or original jurisdiction; mediation cannot be order for matters under Chapter 45 and Chapter 48; and mediation cannot be ordered by the Clerk for matters that the jurisdiction of the Clerk is ancillary.

The Supreme Court of North Carolina was given the authority to adopt rules to implement the new section to Chapter 7A and all mediations under the section would be conducted in accordance with those rules and the section.

The next provision of the bill lists the persons or entities, along with their attorneys, that the court may order to attend the mediation. All persons or entities...
ordered to attend a mediation must be notified of its date, time and location and must attend the mediation unless excused either by the Rules of the Supreme Court or by order of the Clerk. However, it is very important to note that "no one attending the mediation is required to make a settlement offer or demand that it deems contrary to its best interests."

The selection of the mediator is placed in the hands of the parties ordered to mediate. However, if the parties cannot agree upon a mediator, the Clerk will appoint a mediator that has been certified by the North Carolina Dispute Resolution Commission. Mediators acting pursuant to this new section have the same judicial immunity that a judge of the General Court of Justice would have, except that mediators may be disciplined in accordance with procedures adopted by the Supreme Court.

Subsection (f) controls how the costs of the mediation will be distributed. All the named parties, interested persons and fiduciaries ordered to attend the mediation are responsible for the costs of the mediation. The Supreme Court is given the duty to implement rules setting out how the costs are to be paid and a way for those who cannot afford to pay for the mediation to still participate.

Evidence of statements made or conduct during a mediation, whether by a mediator, a party, an expert or a neutral observer, are not discoverable and are inadmissible in any future proceedings or other civil actions on the same claim and matter. Furthermore, no mediator or neutral observer may be compelled to testify or produce evidence of statements or conduct occurring before, during, or after the mediation. This is true regardless if the proceeding is to enforce or rescind a settlement of the matter, except when the mediator or neutral observer is adjudication of the matter. The meaning of ‘interested person’ may vary according to the issues involved in the matter. "Nonparty participants" are defined for this section as “any other person or entity identified by the clerk as possessing useful information about the matter and whose attendance would be beneficial to the mediation.” "Fiduciaries" are defined for this section as “persons or entities who serve as fiduciaries, as that term is defined by G.S. 36A-22.1 [personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees], of named parties, interested persons, or nonparty participants. id.

The parties must follow any rules that the Supreme Court enacts regarding the designation of a mediator. id.

Costs may only be assessed against the estate of a decedent, the estate of an adjudicated or alleged incompetent, a trust corpus, or against a fiduciary upon the entry of a written order making specific findings of fact justifying the taxing of costs.” id.

“Neutral observer” includes for this section “person seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.” id.

Exceptions to this rule include: “proceedings for sanctions pursuant to this section; proceedings to enforce or rescind a written and signed settlement agreement; incompetency, guardianship, or estate proceedings in which a mediated agreement is presented to the clerk; Disciplinary proceedings before the North Carolina State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or proceedings for abuse, neglect, or exploitation of any adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A [Protection of the Abused, Neglected or Exploited Disabled Adult Act] of the General Statutes, respectively. Id.
asked to attest to the signing of any agreements reached during the mediation. 149
If evidence was otherwise discoverable, it is not made inadmissible just because it
was discussed or presented at the mediation. 150

If an agreement is reached during the mediation or during a recess to the me-
diation, the agreement must either be reduced to writing and signed by the parties
to be enforceable in matters where as a matter of law a dispute may be resolved by
an agreement; or in all other matters, 151 and the agreement must be delivered to
the Clerk for “consideration in deciding the matter.” 152 In order to protect the
interests of all persons, the Clerk must make all orders that are just and necessary
to safeguard those interests and may supplement the new section with all neces-
sary procedural details as long as they are not inconsistent with the Supreme Court
Rules. 153

Finally, the Clerk may sanction anyone who was ordered to attend a media-
tion but who, without good cause, did not attend the mediation as ordered. 154 The
Clerk may impose monetary sanctions, including the payment of attorneys’ fees,
mediators fees, or expenses incurred by other parties in attending the mediation. 155
If the clerk intends to impose sanctions, the party must receive notice and a hear-
ing, followed by a written order that includes findings of fact and conclusions of
law before the sanctions can be enforced. 156

Along with the addition of § 7A-38.3B, existing sections of Chapter 7A had
to be amended to fully implement the new section. 157 Section 35A-1108 was
amended to allow a Clerk to extend the period of time following a filing of a peti-
tion before a hearing was set for the completion of a mediation. 158 Section 35A-
1116 was amended to include a new subsection holding that mediator fees and
other costs associated with mediation are assessed in accordance with the newly
adopted § 7A-38.3B. 159 Finally, § 46-27 was amended to state that mediator fees
and costs of mediation of a cotenant’s petition for the sale of land as required for
public use would also be assessed according to the newly adopted § 7A-38.3B. 160

149. Id. Other exceptions where a mediator or neutral observer may be compelled to testify include:
proceedings for sanctions pursuant to this section; disciplinary proceedings before the North Carolina
State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of
any adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A [Protec-
tion of the Abused, Neglected or Exploited Disabled Adult Act] of the General Statues, respectively.
Id.
150. Id.
151. Such as guardianship and estate matters. Id.
152. Id.
153. Id.
154. Id.
155. Id.
156. Id. An order imposing sanctions is reviewable by the Superior court and thereafter appellate
courts. Id.
157. Id.
158. Id.
159. Id.
160. Id.
3. Conclusion

It is well known that an unbelievable number of new cases are filed each year in the United States.\textsuperscript{161} Because of the number of new cases, not to mention the old ones still pending, many courts are overwhelmed.\textsuperscript{162} By passing House Bill 1015, amending Chapter 7A of the North Carolina General Statues, and allowing the Clerk of Superior Court in the General Court of Justice to order mediations, North Carolina has lightened the burden of its courts and ensured that more disputes will be resolved in a timely manner.

F. Mandatory Arbitration for Medical Negligence: Ohio Senate Bill 88

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>Ohio Senate Bill 88</th>
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</thead>
<tbody>
<tr>
<td>Summary:</td>
<td>Establishes a pilot program that mandates arbitration for claims of medical negligence before a complaint may be filed. The program terminates ten years after effective date.</td>
</tr>
<tr>
<td>Status:</td>
<td>Assigned to Insurance, Commerce and Labor Committee, March 2, 2005</td>
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</tbody>
</table>

1. Introduction

It is unlikely that anyone would argue that the medical malpractice insurance premiums are not on the rise. Although one could argue that there are numerous different causes of these changes,\textsuperscript{163} many states are fighting back against these rising costs by instituting Alternative Dispute Resolution Programs for medical malpractice claims. One such state is Ohio. Ohio Senate Bill 88 seeks to establish a pilot program that would require all medical malpractice suits to be arbitrated prior to being filed in the court.\textsuperscript{164}

Senate Bill 88 was introduced on March 2, 2005, by its Sponsors Senator Kevin Coughlin and Senator David Goodman.\textsuperscript{165} The bill was then assigned to the Committee on Insurance, Commerce and Labor.\textsuperscript{166}

2. The Bill

Senate Bill 88 seeks to establish a pilot program requiring the arbitration of all medical negligence claims prior to the claims being eligible to be filed in the court.

\textsuperscript{161} Carver, \textit{supra} note 114, at 68.

\textsuperscript{162} Id.


\textsuperscript{165} Id. at Bill Sponsors.

\textsuperscript{166} Id. at Status Report of Legislation.
If Senate Bill 88 becomes law, it will suspend the existing law that allows for voluntary arbitration of medical negligence claims. Senate Bill 88 requires that the Superintendent of Insurance establish a pilot program that will be effective for ten years in order to determine the benefits of using arbitration in disputes concerning the medical negligence of a health care professional, hospital, or health care facilities. After the program has been in existence for five years, “the Superintendent must submit a preliminary written report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.” At the end of the ten year pilot program, the Superintendent is responsible for preparing a written report to be filed with the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The first requirement under Senate Bill 88 is that the claimant provide the health care professional, hospital, or health care facility (hereafter “entities”) with written notice that contains: “the factual basis for the claim, the standard of practice or care the claimant alleges is applicable to the claim, how the standard of care was breached by the entity, the action that allegedly should have taken place to comply with the standard of care, how the breach of the standard of care was the proximate cause of the claimant’s injury, and the names of all the entities the claimant is notifying pursuant to the provisions in the bill.”

Under Senate Bill 88, the medical negligence claim will be heard by a panel of arbitrators. The panel will consist of three members: one chosen by the claimant, one chosen by the entity, and both the claimant and the entity must agree on the third member. The member chosen by both the claimant and the entity will serve as the chairperson of the arbitration panel, who will be in charge of setting
the time and place of the arbitration hearing and sending notice of the hearing.\textsuperscript{174} All parties to the arbitration must share the cost of the arbitration; however, the claimant and entity will each be responsible for the cost of the member of the arbitration panel that they choose. \textit{Id.}

Prior to the arbitration hearing, the parties must submit to the chairperson five copies of a brief or summary of the parties' factual and legal positions.\textsuperscript{175} A party to a medical negligence claim has the right to attend the arbitration but is not required to attend.\textsuperscript{176}

During the arbitration hearing, the Ohio Rules of Evidence apply.\textsuperscript{177} Furthermore, if possible, factual information bearing on damages or liability must be supported by documentary evidence.\textsuperscript{178} An official record of hearing must be maintained.\textsuperscript{179}

Fourteen days after the hearing, the arbitration panel must release an arbitration evaluation.\textsuperscript{180} This evaluation will not be admissible in any court proceedings and the arbitration panel is not allowed to testify at any subsequent court proceedings.\textsuperscript{181} However, in a jury trial, the jury can be told that the claim had been previously arbitrated and whether or not the panel found favorably for each party.\textsuperscript{182}

Under Senate Bill 88, once the arbitration panel releases its evaluation, each party must either accept the evaluation or reject the evaluation.\textsuperscript{183} A party must either accept or reject awards in the entirety.\textsuperscript{184} The chairperson is not allowed to disclose each party's acceptance or rejection until after the time period for filing a response is over.\textsuperscript{185}

\begin{itemize}
\item \textsuperscript{174} \textit{Id.} Notice of the hearing must be sent to all of the arbitrators and the parties at least 28 days prior to the hearing. \textit{Id.}
\item \textsuperscript{175} \textit{Id.} The parties may also submit additional documents pertaining to the arbitration; however, the party must serve a copy of each document submitted to the opposing party's attorney of record. \textit{Id.} If a party fails to submit the documents, it will be fined $60, which will be distributed equally among the arbitration panel.
\item \textsuperscript{176} \textit{Id.} If scars or disfigurement exist, they may be shown to the panel by personal appearance, photographs and/or videotape. \textit{Id.}
\item \textsuperscript{177} \textit{Id.}
\item \textsuperscript{178} \textit{Id.}
\item \textsuperscript{179} \textit{Id.} This record must consist of a recording and a transcript of the hearing. \textit{Id.}
\item \textsuperscript{180} \textit{Id.} The evaluation must include "the panel's specific finding on the applicable standard of practice or care for the services rendered by the entity," "the panel's awards and if any award is not unanimous;" and all dissenting opinions. \textit{Id.} The evaluation must contain a holding for all cross-claims, counter-claims and third party claims filed in reference to the arbitrated claim. \textit{Id.} The evaluation must be served on all parties. \textit{Id.} The evaluation must also include the opinion of the panel on whether any party has a frivolous claim or defense. \textit{Id.} If it is found that a party has a frivolous claim or defense and the claim proceeds to trial, the party with the frivolous claim or defense must post a bond for $50,000 that will be used to pay all reasonable costs, including attorney fees, of the opposing party if judgment is entered against the party with the frivolous claim or defense. \textit{Id}
\item \textsuperscript{181} \textit{Id.} All other "party admissions, witness testimony, and documentary evidence" are admissible in court proceedings that follow in accordance with the Rules of Evidence. \textit{Id.}
\item \textsuperscript{182} \textit{Id.}
\item \textsuperscript{183} \textit{Id.} This rejection or acceptance must be in writing and must be within 28 days after receiving the evaluation. \textit{Id.} The failure to file an acceptance or rejection will be deemed as an acceptance of the evaluation. \textit{Id.}
\item \textsuperscript{184} \textit{Id.}
\item \textsuperscript{185} \textit{Id.} During the 28 days, the chairperson must place the panel's evaluation and the parties' acceptances or rejections in a sealed envelope for the clerk of the court to file. \textit{Id.} If the case proceeds to trial, the court cannot open the envelope, and the parties cannot disclose their contents, until after the court renders a judgment. \textit{Id.}
\end{itemize}
Depending on whether all the parties accept or reject the awards and the number of parties, many different scenarios are possible. First, if all of the parties accept the awards, the chairperson will mail each party a copy of the award, which will have the final computation including filing fees, costs and interests.\(^{186}\)

However, if any a party rejects the evaluation, the claim must proceed to trial if the claimant files a complaint within 60 days of being notified of the panel’s initial evaluation.\(^{187}\) If the claimant is the party that rejected the evaluation and the claim proceeds to trial, the claimant must pay the entities actual costs unless the court’s verdict is at least 10% greater than the arbitration panel’s evaluation.\(^{188}\)

If the claim involves multiple parties, then there is a different set of scenarios. The first option is that all of the parties on either side of the claim can choose to jointly accept all or some of the arbitration panel’s awards.\(^{189}\)

Another option for when there is multiple parties is that a party may choose to accept an award only on the condition that an opposing party accepts the award.\(^{190}\) However, if any other party rejects an award, then the party that included this limitation is deemed to have rejected all of the awards, even if those awards had been accepted by other parties.\(^{191}\)

If there is no such limitation and some of the other parties reject the award, then the party who did not include any limitation is considered to have accepted the awards and judgment can be entered on all claims where both parties accepted.\(^{192}\) Contrary to the current law, Senate Bill 88 makes any arbitration agreement the parties agree to binding on all parties to the agreement.\(^{193}\) However, the claims involving the parties who rejected the award may proceed to trial the same as above.\(^{194}\)

Finally, in regard to parties that have accepted their portion of the evaluation, the chairperson is responsible for mailing copies of the awards to the applicable parties.\(^{195}\) If the joined parties on either side reject all or part of the evaluation, the claim must proceed to trial on the unresolved matters if a complaint is filed as described above.\(^{196}\)

\(^{186}\) Id. Within one year of all of the parties’ acceptance, a party must apply to the court for an order affirming the award. Id. The court must grant the order unless it chooses to vacate, modify or correct the evaluation based on a party’s application. Id.

\(^{187}\) Id. Under the current law, which would be repealed by Senate Bill 88, the party has one year to file the complaint. §§ 2305.113 and 2339.15.

\(^{188}\) Id. Unless the entity also rejects the evaluation, in which case the entity is only entitled to costs if the verdict is more favorable towards the entity than the arbitration panel’s evaluation. Id.

\(^{189}\) Id. However, if the parties on either side do not decide to act jointly, then each individual party may only accept or reject an award in its entirely, the same as if there were only two parties to the claim. Id.

\(^{190}\) Id.

\(^{191}\) Id.

\(^{192}\) Id.

\(^{193}\) Id. This is true whether the agreement is about awards or other matters. Id. Senate Bill 88 does not set out any specific requirements that must be in the agreement for it to be valid and enforceable. Id.

\(^{194}\) Id.

\(^{195}\) Id. Unless, of course, the party has placed a limitation on the party’s acceptance as previously described. Id.

\(^{196}\) Id.
3. Impact of the Bill

A Fiscal Note and Local Impact Statement for Senate Bill 88 was completed on April 5, 2005.\textsuperscript{197} According to the Fiscal Note, the project impact of Senate Bill 88 was one of no local costs.\textsuperscript{198}

The first level of costs the Fiscal Note focuses on is at the state level. However, at the time of the filing of the Fiscal Note, the Department of Insurance, who is in charge of implementing Senate Bill 88, had not yet completed the fiscal staff's questionnaire regarding the bill's projected costs.\textsuperscript{199} Thus, the Fiscal note presumes that any costs incurred by the Department would be paid using money deposited into the state treasury for the Department of Insurance Operating Fund.\textsuperscript{200}

The other level that the Fiscal Note focuses on is the local level, in other words, the costs to individual counties. The Fiscal Note hypothesizes two possible effects of Senate Bill 88.\textsuperscript{201} The first possible effect is that some of the medical negligence claims that would have been filed and adjudicated in the courts will not be filed because the parties to those disputes will have chosen to accept the evaluation of the arbitration board under the mandatory arbitration provisions of Senate Bill 88.\textsuperscript{202} The second possible effect is that some of the medical negligence claims that would have bypassed the existing law's voluntary arbitration provisions will, under Senate Bill 88, be subject to mandatory arbitration.\textsuperscript{203} However, even if the claim is subjected to mandatory arbitration, one or both of the parties could reject the arbitration panel's decision and the claim would then be filed and adjudicated in the courts.\textsuperscript{204}

The fiscal staff notes that under current law, arbitration is not a preferable form of dispute resolution.\textsuperscript{205} It assumes that this trend will continue and thus, in the short-term, the practical effect of Senate Bill 88 will only delay, not eliminate, the filing of medical negligence claims in courts.\textsuperscript{206} However, the Fiscal Note acknowledges the fact that the mandatory nature of the arbitration may increase the number of successful arbitration, and if that is true, will decrease the number of claims filed in courts.\textsuperscript{207} The fiscal staff also admits it is not able to accurately predict what the magnitude of such reduction would be in each court.\textsuperscript{208} But, if the number of medical claims are reduced, courts will see a loss of revenue from court costs and filing fees; yet, the fiscal staff believes that the savings seen by the courts in terms of personnel and operating costs will be greater than any revenue

\textsuperscript{197} Id. at Fiscal Notes.
\textsuperscript{198} Id.
\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Id.
\textsuperscript{204} Id.
\textsuperscript{205} Id.
\textsuperscript{206} Id.
\textsuperscript{207} Id.
\textsuperscript{208} Id.
4. Conclusion

If passed Senate Bill 88 will have a large impact on the way medical negligence claims are handled in Ohio. Although the pilot program is only in effect for ten years, it will be very interesting to look at the data from those ten years to see if the program will have its desired effect: lowering the costs of medical practitioner insurance while still allowing for the resolution of medical negligence claims.

G. Mandatory Arbitration: Washington House Bill 1814210

Bill Number: Washington House Bill 1814
Summary: The Mandatory Arbitration Bill changes the requirements that subject certain civil suits to mandatory arbitration. The bill lowers the population required for mandatory arbitration of claims for monetary relief less than $15,000 in highly populated counties and authorizes superior court judges or local legislative authorities to institute mandatory arbitration in smaller counties. In addition, the bill allows the superior judges in any county to raise the monetary limit up to $50,000 upon a two-thirds vote.
Status: Referred to Senate Committee on the Judiciary

1. Introduction

Senate Bill 1814 entitled “Mandatory Arbitration” was introduced in the Washington House of Representatives on February 7, 2005 and was quickly referred to the House Judiciary Committee on that same day where it passed by a majority on February 18.211 After the bill was amended in the House Rules Committee to make the bill prospective only,212 the bill was passed by the full house on March 10 by a vote of 75 to 19.213 After transfer to the Senate for consideration, the bill was sent to the Senate Committee on the Judiciary.214 After consideration, the bill is now back in the House Rules committee for a third reading.215

209. Id.
212. Id.
213. Id.
214. Id.
215. Id.
2. The Bill

The main focus of the Mandatory Arbitration bill is to expand the ability of Washington state courts to compel the resolution of civil suits to mandatory arbitration. Washington's present scheme for compelling mandatory arbitration has been in place for 25 years. Currently, Washington statutory law forces civil litigants to resolve their disputes by way of binding arbitration in two situations. First, if the suit is brought in county with a population greater than 150,000 and the legal amount in controversy is less than $15,000, the claim must be heard by an arbitrator, not a superior judge. While claims in more sparsely populated counties are not automatically subject to binding arbitration, they still may never reach judicial adjudication if the superior judges or local legislative authority choose to require mandatory arbitration.

In addition to these guidelines, the legislature has given superior judges in all counties with statutory or self imposed mandatory arbitration requirements the authority to raise the amount in controversy limit from $15,000 up to $35,000. By a two-thirds vote, superior judges may quickly increase the number of civil claims that are subject to mandatory arbitration. The judges may also vote to compel child support cases to arbitration without respect the disputed dollar amount.

Any decision rendered in a mandatory arbitration may be appealed to the Superior Court. The appellate court will review the decision de novo, essentially holding a trial on all factual or legal issues as if the arbitration had never occurred. The appeals court decision will not be constrained by any dollar amounts.

The effect of the new Mandatory Arbitration bill would be to expand the number of cases subject to mandatory arbitration, thus decreasing the docket of state superior courts. To provide for this result, the bill makes two changes to existing law. First the county population threshold for automatic mandatory arbitration of claims will be lowered from 150,000 to 100,000. Second, superior judges may vote to increase the ceiling for the amount in controversy to $50,000, $15,000 more than the previous limit of $35,000.

217. Id.
218. Id. See also WASH. REV. CODE. § 7.06.010. The bill would amend § 7.06.010 and re-enact § 7.06.020.
219. See Judiciary Committee Analysis of H.B. 1814, supra note 216.
220. Id.
221. Id.
222. Id.
223. Id.
224. Id.
225. Id.
226. Id.
Legislators supporting the expansion of compelling civil claimants to binding arbitration primarily point to the judicial efficiency of the process and the current statute's inability to keep up with changing economic conditions. Washington was the first state to codify mandatory arbitration when it enacted the current law in 1980. Since that time, many states have followed their lead by instituting similar provisions. The bills supporters, which include the Washington State Trial Lawyer's Association, note that about two thirds of civil cases in Washington are consumer related, and the rest are mostly small business claims that can all benefit from mandatory arbitration. By reducing the load of judicial dockets, supporters claim that the system has largely paid for itself by reducing costs for both parties involved in the dispute, and saving the public money by reducing the amount of cases that go to trial. The bill's proponents rationalize their attempt to raise the dollar amounts by pointing out that the current $35,000 cap has not been raised since 1987, and does not reflect economic trends. The adjustment to $50,000 would accordingly be moderate, as it barely keeps pace with the rate of inflation.

Opponents to the Mandatory Arbitration bill note that the bill's net effect would subject more cases to de novo review. Many statewide defendants, including the Washington Defense Trial Lawyer's Association, Washington Insurers, and State Farm Insurance, argue that the proposed bill will lead them to appeal more cases. Many defendants feel that they find more success in front of a jury, as arbitrators are prone to possessing a "split the difference" mentality instead of giving the claim its objectively obtainable value. Thus defendants will have an incentive to seek a trial de novo to obtain a proper judicial trial on the merits. More de novo cases simply means more expense for the courts and taxpayers.
II. HIGHLIGHTS

A. California Assembly Bill 1322

This bill was introduced to the California Assembly on February 22, 2005. The bill was sponsored by the Judicial Council and the California Judges Association and amends Section 170.1 of California’s Code of Civil Procedure. In very broad terms, un-amended Section 170.1(8) mandated the disqualification of judges who, within the preceding two years, were involved in discussions regarding prospective employment or service as a dispute resolution neutral with a party to a dispute. According to the bill’s author, the purpose of the bill is to prevent the wholesale disqualification of civil judges that might result from an overly broad interpretation of the standards contained in section 170.1(8). In particular, the bill’s sponsors were concerned that the language of subdivision (8)(a) could lead to game-playing in litigation, or that they could be inappropriately interpreted to require disqualification, even if the discussions concerning prospective employment were entirely superficial or even negative. In fact, because Judicial Council case management rules require judges to consider what alternative dispute resolution process might be appropriate for a case, the bill’s sponsors were concerned that the disqualification of judges would be triggered in virtually every civil case. Assembly Bill 1322 clarifies the grounds for disqualification of a judge in a civil matter, limiting disqualification to those instances where the propriety of continued service by the judge may legitimately be questioned. On September 22, 2005 this bill was approved by the governor and signed into law.

B. Kansas House Bill 2036

Kansas, along with several other states, exempts arbitration agreements in insurance contracts from enforcement. This is possible because of the McCarran-Ferguson Act, which provides that no act of Congress shall supersede any state legislation concerning insurance. This prevents the Federal Arbitration Act from applying to insurance contracts in states that have laws which preclude the enforcement of arbitration agreements in insurance contracts. Therefore, in
Kansas and other states with these provisions, insurance companies cannot require their customers to agree to submit claims to an arbitrator, resulting in a far number of claims going to court. Kansas House Bill 2036 attempts to repeal this exemption from the Kansas Arbitration statute. The bill was introduced in the Kansas House on January 11, 2005 and referred to the Insurance Committee on January 12. No action has been taken on it since.

C. Illinois House Bill 2594

This bill, introduced to the Illinois legislature on February 22, 2005, amends the Home Repair and Remodeling Act and purports to protect homeowners' rights relating to home repairs. Specifically, the bill mandates that consumers be affirmatively given an option of accepting or rejecting clauses relating to binding arbitration and waiver of jury trials before the contract or agreement is executed. The bill provides that proof that the consumer was given the requisite notice and option to reject is provided by having the consumer sign her name and write the word “accept” or “reject” in the margin next to each of the provisions. The bill establishes that failure to advise a consumer of the presence of the binding arbitration clause or the jury trial waiver clause or to secure the necessary acceptance, rejection or consumer signature shall render null and void each clause that has not been accepted or rejected and signed by the consumer. The bill, sponsored by Representative William Delgado (D-Chicago) and Senator John Cullerton (D-Chicago), was signed into law by Illinois Governor Blagojevich and is effective January 1, 2006. According to Representative Delgado, “the signing of this legislation is an important step forward in protecting consumers’ rights... Legal contracts can be very complicated and many times, a consumer will sign them without truly having an understanding of what they will be bound to. By requiring that contractors inform clients of these provisions, we will be able to decrease the number of cases where consumers give up their legal rights without being aware of it.”

D. Iowa Senate File 86

Modeled after the federal Administrative Procedures Act, Iowa Senate File 86 attempts to establish a process in Iowa for negotiated rule making. Under the

255. H.B. 2594 § 15.1(b) supra note 253..
256. Id.
257. Id. at § 15.1(c).
258. Id.
259. See New Laws Give Homebuyers Easy Access to Information, supra note 254.
260. Id.
proposed legislation, whenever a statute requires a state agency to, it must create
an ad hoc group to review any proposed rules before publication of the notice of
the intended action and should attempt to reach a consensus concerning the pro-
posed rule.261 The group must represent a “fair cross section of opinions and in-
terests regarding the proposed rule.”262

E. Mississippi House Bill 112

House Bill 112 would have required that all tort actions be submitted to me-
diation before a lawsuit could be filed; however, the bill died in committee.263 It
was introduced on January 4, 2005 and quickly died on February 1.264 The Mis-
sissippi Bar would have been required to certify mediators for these disputes, who
would have been required to “make every effort” to resolve the dispute.265 A per-
son with a claim would provide notice to the opposing party, at which point the
statute of limitations would begin to toll.266 The dispute would proceed to media-
tion, which would be non-binding unless the parties agreed to a binding proc-

262. Id.
   /HB/0100-0199/HB0112IN.htm (last visited December 9, 2005).
265. H.B. 112, supra note 263.
266. Id.
267. Id.
268. Id.
   B&P_BILL_NO=391&P_BILL_DPT_NO="&Z_ACTION=Find&P_SBJ_DESCR=&P_SBJT_SBJC
   D=&P_LST_NM1=&Paryana _ID_SEQ=#ba_table (last visited December 9, 2005).
   (last visited December 9, 2005).
   /HB0391.htm (last visited December 9, 2005). The court may refer the proceeding to mediation at its
own suggestion with the consent of the parties or upon motion of both parties. Id. At any point, a
party may withdraw from the mediation without penalty. Id.
272. Id. These include: deliberate homicide, mitigated deliberate homicide, intimidation, partner or
family members assault, assault of a minor, stalking, aggravated kidnapping, a sex crime, endangering
the welfare of children, sexual abuse of children, or ritual abuse of a minor. §1(2)(a)-(k).
subject to mediation, including but not limited to the charge, plea bargain or a recommended sentence. Section 2 lists fifteen factors for a court to use in determining whether mediation is appropriate for the criminal proceeding. Section 3 provides that if the mediation is successful, the mediator shall inform the court of the results and the agreement reached. If the mediation is not successful, the mediator shall notify the court and the prosecutor may proceed with the prosecution of the defendant. Section 4 states that mediation communications and documents are privileged and confidential and may not be disclosed to any judicial or administrative proceeding. Section 5 holds that the time spent in mediation cannot be counted to determine whether a defendant's right to a speedy trial has been violated. Section 6 requires that the costs of mediation be divided equally between the defendant and the prosecution, unless the defendant is eligible for a public defender, in which case the prosecution pays all of the costs. Finally, Section 7 codifies the Bill as part of Title 46, chapter 1

G. Oregon House Bill 2744

House Bill 2744 seeks to make a claimant in a civil action pay prevailing party fees to a defendant who makes an offer to settle, when the offer is rejected by the claimant who then fails to obtain a more favorable judgment. House Bill 2744 also requires a court to order a settlement conference if it is requested by any

273. Id.
274. Id. These include: the nature of the offense; any special circumstances or characteristics of the defendant or any victim; whether the defendant previously participated in mediation in the current or a prior proceeding; whether it is probable that the defendant will cooperate with the mediator; the recommendation of any victim or victims; the recommendation of any involved law enforcement agency; whether a qualified mediator is available; the type of sentence, including any treatment, that the defendant would most likely be amenable to; the best interests of the defendant and the security of the public may require that the defendant be placed in secure detention or under supervision, and whether there are facilities available for treatment and rehabilitation of the defendant; whether there is evidence that the charged offense included violence or was otherwise committed in an aggressive and premeditated manner; the motivation for the commission of the charged offense; the age of the defendant and of any codefendant or victim; the previous history of the defendant, including any criminal history and any other prior antisocial behavior or pattern of physical violence; the sophistication and maturity of the defendant as determined by factors such as home, employment, school activities, emotional attitude, and pattern of living; whether any victim wishes to address the parties and mediator during mediation; and other matters that the court believes relevant. §2(1)-(15).
275. Id.
276. Id.
277. Id. Except when: the parties to the mediation agree, in writing, to disclosure; a written agreement by the parties to mediate permits disclosure; a communication or document provides evidence of an ongoing or future criminal activity; disclosure is necessary to prevent an action or event that is reasonably likely to result in death, serious bodily harm, or substantial injury to the financial interests or property of another; a communication or document is necessary to defend against a legal malpractice claim by the defendant against the defendant's attorney; or a communication or document is relevant to determining the existence of an agreement that resulted from the mediation or to the enforcement of an agreement. §4(1)-(6).
278. Id.
279. Id.
280. Id.
party to a civil action.\textsuperscript{282} It was introduced by Representative Linda Flores at the request of the Oregon Litigation Fairness Project.\textsuperscript{283} On March 4, 2005 House Bill 2744 was assigned to the Subcommittee on Civil Law where a public hearing was held on April 12, 2005. The bill remained in committee when the legislature adjourned in August.\textsuperscript{284}

House Bill 2744 would amend the current language of the Oregon Rules of Civil Procedure, Rule 54, Dismissals of actions; compromise.\textsuperscript{285} Section 1 changes the rule to hold that if the claimant fails to obtain a more favorable judgment then what was offered in the settlement agreement, then the claimant will not receive "costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer," and the defendant will recover from the claimant "prevailing party fees, and costs and disbursements incurred after the time of the service of the offer."\textsuperscript{286} Section 2 commands a court, instead of just giving the court the

\begin{itemize}
\item \textsuperscript{282} Id.
\item \textsuperscript{283} Id. The Oregon Litigation Fairness Project is an affiliate of the American Tort Reform Association. Oregon Litigation Fairness Project Brochure, available upon request, fairness@oregonexcellence.com. The purpose of the Oregon Litigation Fairness Project is to "promote fair litigation practices and to put a stop to frivolous lawsuits." Id. The Oregon Litigation Fairness Project attempts to accomplish this by pushing the introduction of legislation that promotes its purpose. Id. One such piece of legislation is House Bill 2744, which the Oregon Litigation Fairness Project hopes will "mandate settlement conferences" and "assess attorney fees to plaintiffs who decline a pretrial settlement offer and later receive a smaller judgment at trial." Id.
\item \textsuperscript{284} H.B. 2744, Current Status, available at http://www.leg.state.or.us/cgi-bin/searchMeas.pl. (last visited December 9, 2005).
\item \textsuperscript{285} ORE. R. CIV. P. 54. The current language of these sections of Rule 54:
\item E Compromise; effect of acceptance or rejection.
\begin{enumerate}
\item E(1) Except as provided in ORS 17.065 through 17.085, the party against whom a claim is asserted may, at any time up to 10 days prior to trial, serve upon the party asserting the claim an offer to allow judgment to be given against the party making the offer for the sum, or the property, or to the effect therein specified.
\item E(2) If the party asserting the claim accepts the offer, the party asserting the claim or such party's attorney shall endorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon such party asserting the claim; and thereupon judgment shall be given accordingly, as a stipulated judgment. If the offer does not state that it includes costs and disbursements or attorney fees, the party asserting the claim shall submit any claim for costs and disbursements or attorney fees to the court as provided in Rule 68.
\item E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the party asserting the claim fails to obtain a more favorable judgment, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer, but the party against whom the claim was asserted shall recover of the party asserting the claim costs and disbursements incurred after the time of the service of the offer.
\end{enumerate}
\item F Settlement conferences.
A settlement conference may be ordered by the court at any time at the request of any party or upon the court's own motion. Unless otherwise stipulated to by the parties, a judge other than the judge who will preside at trial shall conduct the settlement conference.
\item \textsuperscript{286} Id. New language of Rule 54E(3) per House Bill 2744 [language within {+} braces and plus signs + ] is additions to the section is new; within {-} braces and minus signs - ] is omitted from the existing Rule):
\begin{enumerate}
\item E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the party asserting the claim fails to obtain a more favorable judgment, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer, {-} but - ] {+}
option, of ordering a settlement conference if requested by any party.\textsuperscript{287} It also
takes away the court’s power of ordering a settlement conference upon its own motion.\textsuperscript{288}

III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced during the first
eleven months of 2005 concerning alternative dispute resolution.

\textit{Alabama}

\textit{Bills Enacted} – None.
\textit{Other Legislation} – S.B. 28, S.B. 9 & H.B. 111 (Prevents compelling mediator to testify or produce documents in a civil proceeding); H.B. 426 (Validity of agreements to arbitrate future agreements).

\textit{Alaska}

\textit{Bills Enacted} – None.

\textit{Arizona}

\textit{Bills Enacted} – S.B. 1055 (Continues Office of Ombudsman-Citizens Aide)
\textit{Other Legislation} – S.B. 1343 (Validity of arbitration clause regarding internal affairs of a corporation).

\textit{Arkansas}

\textit{Bills Enacted} – H.B. 2612 (Prohibits binding arbitration clause in motor vehicle sales contract).
\textit{Other Legislation} – H.B. 2393 (Dispute resolution for public employment disputes).

\textsuperscript{287} Id.
\textsuperscript{288} Id.
Bills Enacted – S.B. 2 (Extends mediation program in insurance industry); S.B. 63 (Mediation relative to special education); S.B. 67 (Arbitration for dispute between court and county regarding collection of civil penalties); S.B. 1018 (Long term ombudsman may obtain financial information to investigate financial abuse); S.B. 231 (Healing arts professionals must report arbitration awards from malpractice claims); S.B. 367 (Dispute resolution for contracts between health insurance company and health care provider); S.B. 244 (Expands use of longterm care ombudsman); S.B. 137 (Requires association managing common interest developments to allow for alternative dispute resolution); S.B. 1088 (Prohibits ex parte contacts between the court and appointed mediators); A.B. 415 (Allows arbitration representation by out of state attorneys); S.B. 1112 (Arbitration for disputes between architects and third parties); A.B. 1261 (Establishes dispute resolution for foster children); A.B. 179 (Long term care facilities must assist elderly in contacting ombudsman); A.B. 316 (Compliance with arbitration awards by business managers); A.B. 550 (Ombudsman for inmate sexual abuse complaints); A.B. 1202 (Office of Military director to select a mediator); A.B. 302 (Must report award in architectural dispute); A.B. 585 (Equipment dealers liable for arbitration costs in certain situations); A.B. 1322 (Prior employment as dispute resolution professional in a case is grounds for disqualification of a judge); A.B. 1529 (Waiver of state bar membership fee for dispute resolution professionals); A.B. 1742 (Requires offer to compromise a dispute in arbitration to be in writing).

Other Legislation – S.B. 390 (Agreement to receive cash advances on probate estate not subject to binding arbitration); S.B. 399 (Director of Health Services has lien on arbitration or mediation settlement obtained by injured or diseased party); S.B. 46 (Commission on Worker’s Compensation Rate Regulation to establish policy holder ombudsman); S.B. 177 (Dispute resolution system for labor management agreements); S.B. 605 (Dispute Resolution for special education); S.B. 488 (Legislative intent is to enact dispute resolution laws); A.B. 202 (Petition to compel arbitration); A.B. 910 (Establishes Life Sciences Ombudsman); A.B. 1176 (Requires that arbitration award shall be supported by law and substantial evidence is the parties so agree); A.B. 1553 (Commencement of a civil suit tolls arbitration statute of limitations); A.B. 1619 & S.B. 177 (Dispute resolution in Worker’s Compensation collective bargaining); A.B. 1652 (Parties must continue to give effect to arbitration provisions after expiration of MOU); A.B. 1460 (Dispute resolution for complaints against subdivision contractors); A.B. 202 (Court enforcement of arbitration agreements); A.B. 1059 (Either party to a pesticide transaction may initiate binding arbitration); A.B. 829 (Establishes an alternative dispute resolution pilot program for alleged violations of the Individuals with Disabilities Education Act); A.B. 1321 (Departments of Managed Healthcare and Insurance to implement dispute resolution system); A.B. 770, S.B. 304 & S.B. 551 (Common interest development ombudsman); A.B. 27 (Mediation of disputes between courts over cost sharing); A.B. 1741 (Arbitration agreements only revoked upon same grounds as recission of a contract); A.B. 1760 (Caps mediation fees for earthquake insurance disputes); A.B. 910 (Establishes Life Sciences Ombudsman Program); A.B. 1261 (Foster children students to have same dispute resolution options as their pupils); A.B. 367 (Requires dispute resolution clause in
contract between health insurer and provider); A.B. 1116 (Departments of Managed Health Care and Insurance to implement dispute resolution system).

**Colorado**

*Bills Enacted* – None

*Other Legislation* – S.B. 224 (Dispute resolution for Urban Renewal Project); S.B. 30 (Family law courts to gather information regarding mediation services); S.B. 185 (Administrative law judge may engage in and encourage alternative dispute resolution); S.B. 1207 (Dispute resolution procedure between transportation district and utility companies); H.B. 1171 (Review of arbitrator's decision in domestic relations proceedings); H.B. 1074 (Repeals dispute resolution requirements in excavation by utility company); H.B. 1219 (Arbitration for oil and gas negotiations).

**Connecticut**

*Bills Enacted* – S.B. 1093 (Department of Mental Retardation Ombudsman); H.B. 6868 (Managed Care Ombuds reporting requirements).

*Other Legislation* – S.B. 1052 & H.B. 6714 (Arbitration relating to medical malpractice claims); S.B. 1138 (Arbitration for disputes regarding retirement and disability benefits for corrections officers); S.B. 1194 (Binding arbitration in divorce proceedings); S.B. 1159 (Arbitration for nursing pools); S.B. 1148 (Grievance process for merchandise and laundry service employees); S.B. 1205 (Name change for Office of Managed Care Ombuds); S.B. 1237 (Managed Care Ombuds communications with public organizations); S.B. 970 (Long-term Care Ombudsman Office is transferred to Department on aging); S.B. 131, S.B. 685, & H.B. 5310 (Medical malpractice claims must be submitted to mediation); S.B. 273 (Physicians and patients allowed to contract for arbitration of disputes); S.B. 690 (Municipality must use same binding arbitration as state); S.B. 1249 & S.B. 929 (Preferred provider insurance contracts must include physician payment dispute resolution process); S.B. 1363 & H.B. 5973 (Adopts Uniform Mediation Act); S.B. 1123 (Adopts the Uniform Arbitration Act); S.B. 1111 & H.B. 6619 (Waterbury unions placed under arbitration process in the Municipal Employee Relations Act); S.B. 1297 (Grievance procedures for managed care organizations); H.B. 6638 (Mediation in child custody disputes); H.B. 6447 (Factors considered by binding municipal arbitration panel); H.B. 6428 (Mediation procedures in Fair Housing Program); H.B. 6594 (Mediation Training for resident services coordinators); H.B. 6738 (Arbitration in state employee collective bargaining); H.B. 5008 (Extends negotiation period for teacher's contracts); H.B. 5078 (Compensation for Board of Mediation and Arbitration); H.B. 5258 (Municipality may intervene in binding arbitration); H.B. 5226 (Towns may place moratorium on arbitration awards); H.B. 5301 & H.B. 5225 (Employee or teacher arbitration awards may be rejected by town); H.B. 5384 (Encourages arbitration in medical malpractice claims); H.B. 5758 (Fiscal impact of binding arbitration on towns); H.B. 6295 (Negotiation of contracts between municipality and city employees or teachers); H.B. 6285 (Allows party to arbitrate medical malpractice claims); H.B. 6707 (Dispute resolution clause in cellular phone contracts); H.B. 6775 (State Ombudsman to develop mobile care integration team); H.B. 6826 (Long-term care
ombudsman now part of Department of Social Services); H.B. 6548 & H.B. 6549 (Establishes ombudsman for inmate disciplinary procedures).

**Delaware**

* Bills Enacted – None.

* Other Legislation – S.B. 212 (Mediation services for disputes regarding rental rate for mobile home lot); S.B. 53 (Dispute resolution in Public Employment Relations Act); S.B. 41 (Freedom of Information Act does not apply to certain types of mediations).

**District of Columbia**

* Bills Enacted – L.B. 103 (Establish mediation services for homeless individuals).

* Other Legislation – L.B. 418 (Parties to a medical malpractice claim must seek mediation); L.B. 145 (Adopts the Uniform Mediation Act); L.B. 146 (Adopts the Uniform Arbitration Act).

**Florida**

* Bills Enacted – S.B. 1650 & H.B. 1645 (Dispute resolution in workforce renovation); S.B. 1486 (Insurer must notify claimant of availability of mediation); H.B. 565 & S.B. 1124 (Mediation of disputes between mobile home owners and lot owners); H.B. 577 & S.B. 274 (Dispute resolution procedures in Juvenile Interstate Compact).

* Other Legislation – S.B. 2036 & H.B. 1459 (Alternative dispute resolution process for commercial real estate liens); S.B. 1488 (Punishment for insurers who fail to notify claimant of mediation availability); S.B. 2456 (Dispute resolution procedures for Interstate Insurance Product Regulatory Commission); S.B. 2496 (Dispute resolution for municipalities and community development agencies); S.B. 2514 & H.B. 1503 (Prohibits mandatory arbitration clause in life and health insurance policies); S.B. 1312 & H.B. 293 (Mediation and arbitration guidelines under the Logo Sign Program); S.B. 1196 (Administrative Procedures Commission to act as ombudsman to citizens regarding agency rules); S.B. 2390 & H.B. 1489 (Dispute resolution procedures for nursing home defendants); S.B. 1710 & H.B. 1485 (Mediation requirements for charter schools); S.B. 184 (Dependency mediation in drug court programs); S.B. 2242 & H.B. 1343 (Requires court to enforce certain arbitration awards); S.B. 884 (Florida Caregiver Institute board of directors to include long term care ombudsman); S.B. 762 (Dispute resolution for telecommunications and voice over internet protocol services); S.B. 1692 ( Arbitration in medical malpractice insurance contracts); S.B. 2488 (Dispute review boards to resolve claims arising out of construction contracts for Department of Transportation prior to arbitration); S.B. 2656 & H.B. 1915 (Community arbitration in juvenile justice); S.B. 2542 & H.B. 1935 (Limiting fees and expenses for court appointed mediators and arbitrators); S.B. 948 & H.B. 1593 (Mediation and arbitration standards for condominium association disputes following property damage by a severe windstorm); H.B. 1865 (Dispute resolution in growth management); H.B. 517 (Mediation of disputes arising from campus development);
H.B. 561 & S.B. 716 (Informed mediation relating to agricultural economic development); H.B. 507 & S.B. 507 (Insurer may no longer require arbitration of rate disputes); H.B. 1229 (Ombudsman in homeowner’s association disputes); H.B. 1453 (Mediation in Local Government Comprehensive Planning and Land Development Regulatory Act); H.B. 403 (DR in Interstate Insurance Product Regulation Compact).

Georgia

Bills Enacted – S.B. 155 (Dispute resolution for motor vehicle franchises).

Other Legislation – H.B. 684 (Open and public meeting requirements are not applied to mediations and arbitrations conducted by state agency); H.B. 606 (Mediation and arbitration of labor disputes); H.B. 571 (Voluntary binding arbitration in medical malpractice claims); H.B. 39 (Mediation by the Council on Affordable Housing).

Hawaii

Bills Enacted – S.B. 1345 (Dispute resolution pilot program for condominium disputes); H.B. 1528 (Increase in State Ombudsman salary).

Other Legislation – S.B. 453 & H.B. 439 (Ombudsman to have access to certain records including tax returns); S.B. 1314 (Improves availability of alternative dispute resolution in estate planning disputes); S.B. 454 (Expands jurisdiction of State Ombudsman); S.B. 520 (Repeals mandatory arbitration for most collective bargaining units); H.B. 1126 & S.B. 558 (Dispute resolution in family court); H.B. 549 & S.B. 657 (Removes certain employee organization disputes from binding arbitration); H.B. 550 & S.B. 659 (Modifies factors arbitration panel must consider in public employee arbitration); H.B. 440 (Amends duties of State Ombudsman); H.B. 163 (Administrative hearing in condominium disputes following mediation); H.B. 380 (Attorney fees in insurance arbitration); H.B. 548 (Excludes certain public employees from the Uniform Arbitration Act); H.B. 1518 (Arbitration and mediation in employee health plans).

Idaho

Bills Enacted – S.B. 1071 (Establishes Trust and Estate Dispute Resolution Act); H.B. 249 (Increase mediation access for disabled individuals); H.B. 197 (Arbitration of disputes with farm equipment dealers); H.B. 120 (Dispute resolution in the Interstate Product Regulation Compact).

Other Legislation – None.

Illinois

Bills Enacted – S.B. 98 (Joint custody mediation not required when danger to a partner is present); S.B. 101 (Provides for arbitration in the Assistive Technology Warranty Act).

Other Legislation – S.B. 1620 (Ombudsman in Nursing Home Care Act); S.B. 1139 (Amends short title of the Uniform Mediation Act); S.B. 784, S.B. 1285, H.B. 2117, H.B. 2120 & H.B. 2147 (Amends Employee Arbitration Act);
S.B. 1778 & H.B. 3615 (Dispute resolution procedures for Ensuring Success in School Law); S.B. 1140, S.B. 150, H.B. 372, H.B. 705 & H.B. 1559 (Amends Health Care Arbitration Act); S.B. 1830 (Medical Ombudsman office to resolve prisoner grievances); S.B. 1873 (Arbitration in under insured motorist coverage); S.B. 1846 (Amends the Uniform Arbitration Act); S.B. 1722, H.B. 2186 & H.B. 3689 (Amends arbitration procedures under the Illinois Insurance Code); H.B. 1018 & H.B. 1021 (Arbitration of medical malpractice disputes); H.B. 860 (Dispute resolution in the Unemployment Insurance Act); H.B. 4074 (Amends Health Care Arbitration Act); H.B. 4026 (Binding arbitration under the Education Labor Relations Act); H.B. 3856 (Governor may transfer funds from Mandatory Arbitration Fund); H.B. 3734 (Arbitration for municipal employees); H.B. 3736 (Arbitration procedures may not limit collective bargaining for disciplinary and discharge disputes); H.B. 3737 (Mandatory arbitration of all disciplinary matters under the Public Labor Relations Act); S.B. 170, H.B. 3452 & H.B. 2495 (Amends dispute resolution procedures in Worker's Compensation Act); H.B. 2594 (Binding arbitration in Home Repair Remodeling Act); H.B. 714 (Creates Office of Mobile Home Park Ombudsman)

**Indiana**

**Bills Enacted** – S.B. 8 (Creates pilot program for family law arbitration); H.B. 1265 (Department of Environmental Management to work with ombudsman in rule implementation); H.B. 1263 (Certain counties may participate in domestic relations alternative dispute resolution and fund alternative dispute resolution programs).

**Other Legislation** – S.B. 4 (Adopts the Uniform Mediation Act); S.B. 147 (Adopts the Uniform Arbitration Act); S.B. 276 (Final offer mediation-arbitration in collective bargaining for educational personnel); S.B. 128 (Mediation-arbitration in collective bargaining for public safety employees); H.B. 1705 (Restrictions on arbitration of medical malpractice suits); H.B. 1748 (Arbitration for state employee grievances); H.B. 1512 (Contested issues in dissolution of marriage proceeding must be submitted to mediation); H.B. 1399 (Public works mediator to resolve contractor claims in public works projects).

**Iowa**

**Bills Enacted** – S.F. 323 (Establishes the Uniform Mediation Act).

**Other Legislation** – S.F. 374 (Establishes the Uniform Arbitration Act); S.F. 381 & S.F. 279 (Dispute resolution in residential construction defect case); S.F. 295 (Truant child who refuses to participate in or violates mediation agreement commits a delinquent act); H.F. 558 (Mediation for municipal corporation providing electric service); H.F. 471 (Mediation of wearing apparel discrimination); H.F. 397 (Mandatory mediation in child custody proceedings); H.F. 422 (Enforcement of arbitration clause under Iowa High Cost Mortgage Act); H.F. 307 (Title loan lenders cannot use mandatory arbitration clause); H.F. 79 (School board’s authorization of levy not subject to arbitrator’s decision); H.F. 763 (Cemetery insurer required to allocate collected fees to pay for mediation); H.F. 581 (Repeals arbitrator appointment provision in gas pipeline easement dispute); H.F. 707 (Arbitration-mediation standards to be used in appointing fact finder for public employee
collective bargaining); H.F. 667 & H.F. 87 (Mediation of complaints by veteran in preferential hiring claim).

**Kansas**

**Bills Enacted** – H.B. 2153 (Amends Long Term Care Ombudsman statute).

**Other Legislation** – S.B. 140 & H.B. 2016 (Restricts enforcement of arbitration agreements); H.B. 2036 (Allows enforcement of arbitration agreements in insurance contracts).

**Kentucky**

**Bills Enacted** – None.

**Other Legislation** – S.B. 104 (Complaints regarding sanitation district to be heard by a dispute resolution officer); S.B. 1 & H.B. 491 (Amends state constitution to giving legislature power to require alternative dispute resolution in disputes involving health care provider); H.B. 146 (Amends state constitution giving legislature power to require alternative dispute resolution in all medical malpractice claims); H.B. 5 (Provides for mediation in expulsion of certain charges from criminal record).

**Louisiana**

**Bills Enacted** – S.B. 190 (Establishes ombudsman for developmental disabled individuals); H.B. 32 (Provides for the acceptance of agreements from court ordered mediations involving children).

**Other Legislation** – S.B. 184 (Confidential information disclosed as a result of medical review panel proceeding cannot be compelled in subsequent arbitration); S.B. 97 (Mediation in St. Landry Parish annexation); S.B. 98 (Mediation and arbitration in Public Employment Partnership Act); H.B. 447 (Qualifications for mediators in child custody proceedings); H.B. 433 (Court may require parent violating child visitation order to attend mediation).

**Maine**

**Bills Enacted** – S.P. 72 (Act to improve Child Welfare Ombudsman function); H.P. 1054 (Court ordered ADR professional to be added as member of Family Law Advisory Commission); H.P. 226 (Committee to Study Compliance with Maine’s Freedom of Access Laws may review actions of Public Access Ombudsman).

**Other Legislation** – S.P. 492 (Dispute resolution in defective workmanship or materials claim by homeowner); S.P. 443 & H.P. 935 (Establishes Office of Small Business Ombudsman); S.P. 384 (Taskforce to design child protection mediation system); S.P. 264 (Mediation of attendance disagreement by State Board of Education); S.P. 241 (Eliminates arbitration requirement for health insurance carriers); S.P. 217 (Expands use of arbitration for consumer complaints); H.P. 396 (Binding arbitration for certain municipal employees); H.P. 343 (Department of Health and Human Services to conduct mediation for grievance of children); H.P. 169 (Mediation of railroad freight disputes).
Maryland

**Bills Enacted** – S.B. 426 (Dispute resolution program for children in state supervised care); S.B. 789 (No binding arbitration in fire and rescue service collective bargaining); S.B. 710 (Mediation of parental rights disputes); H.B. 79 (Arbitration of easement values).

**Other Legislation** – S.B. 682 (Arbitration for coverage disputes under No-Fault Cerebral Palsy Insurance Fund); S.B. 721 (Prerequisites for arbitration of residential construction defect claim); S.B. 387 (Mediation of property value disputes under home insurance policy); H.B. 440 (Mediation and arbitration in Housing Opportunities Commission collective bargaining); H.B. 1393 (Adopts the Revised Uniform Arbitration Act); S.B. 815 & H.B. 1068 (Arbitration in collective bargaining for state personnel); S.B. 671 & H.B. 752 (Requirements of home purchase mediation conducted by Consumer Protection Division); H.B. 826 (Mediation in Permanency for Families and Children Act of 2005).

Massachusetts

**Bills Enacted** – None.

**Other Legislation** – S.B. 2235 & S.B. 1411 (Arbitration for State Police Association); S.B. 1514 (Interest arbitration for health care professionals); S.B. 1580 (Act regarding binding arbitration); S.B. 1608, H.B. 524, H.B. 167 & H.B. 403 (Binding arbitration for fire fighters and police officers); S.B. 1733 (Act promoting the use of alternative dispute resolution); S.B. 342 (Teachers may seek binding arbitration regarding dismissal); S.B. 366 (Act promoting alternative dispute resolution for students); S.B. 199 (Arbitration for consumers in wheelchairs); H.B. 1567 (Arbitration for automobile insurance property damage); H.B. 2627 (Long term care ombudsman in hospitals); H.B. 540 & H.B. 386 (Arbitration in public employee disputes); H.B. 19 (Adopts the Uniform Mediation Act); H.B. 155 (Dispute resolution for emergency medical technicians); H.B. 18 (Revises the Uniform Arbitration Act for commercial disputes); H.B. 408 (Jurisdiction of American Arbitration Association in prohibited practices charges); H.B. 410 (Dispute resolution to resolve issues during mid term bargaining); H.B. 165 (Chairman of arbitration board to appoint committee to resolve collective bargaining disputes); H.B. 167 & H.B. 403 (Regulates arbitration relating to firefighters and police officers); H.B. 342 (Authorizes appointment of a mediator in employee collective bargaining disputes); H.B. 386 (Parties may petition for arbitration of employee disputes during impasse).

Michigan

**Bills Enacted** – H.B. 4096 (Creates children’s ombudsman).

**Other Legislation** – S.B. 1 (Creates legislative mental health ombudsman); S.B. 743 (Arbitration in disputes regarding county corrections officers); S.B. 638, S.B. 385, S.B. 56, H.B. 4639 & H.B. 4534 (Mediation of grievances regarding labor strikes by public employees).
Minnesota

**Bills Enacted** – None.

**Other Legislation** – S.F. 547 (Ratification of state employment arbitration awards); S.F. 1478 & H.F. 1159 (Adopts the Uniform Mediation Act); S.F. 550 & H.F. 426 (Farmer-lender mediation program); S.F. 1553 (Non expiration of arbitration for firefighters); S.F. 1949 & H.F. 2002 (Health care provider is party in interest in no fault arbitration); H.F. 1165 & S.F. 819 (Ombudsman for state employee whistle blower investigations); H.F. 1072 & H.F. 290 (Mediation for grandparent visitation rights).

Mississippi

**Bills Enacted** – None.

**Other Legislation** – H.B. 112 (Requires the submission of tort disputes for mediation); H.B. 125 (Medical Practice Disclosure Act: Requires physicians to report settlements and arbitration awards); H.B. 6, H.B. 1338, & S.B. 2894 (Enforcement of dispute resolution for juvenile justice); H.B. 1558 (Arbitration in vessel dealer agreements).

Missouri

**Bills Enacted** – H.B. 276 (Offers mediation to parents regarding special education); S.B. 168 (Homeowner must attempt to resolve dispute with contractor before filing civil action); S.B. 202 (Retirement benefits for state board of mediation appointee).

**Other Legislation** – H.B. 112 (Requires persons appointed to State Board of Mediation to serve 50% of term to receive retirement benefits); H.B. 663 (Prohibits any long term care facility from relieving an ombudsman volunteer from their duties); H.B. 881 (Changes certain provisions relating to State Board of Mediation); S.B. 457 (Prohibits any long term care facility from relieving an ombudsman volunteer from their duties); S.B. 395 (Allows for certain local courts to impose surcharges to establish an ADR program); S.B. 522 (Creates an informal dispute resolution for long term care facilities to contest inspections or complaint investigations); S.B. 153 (Modifies law relating to long term-care ombudsman volunteers); E.O. 16 (Transfers all powers, duties, and functions of State Board of Mediation to Labor and Industrial Relations Commission); S.B. 2 (Enforcement of alternative dispute resolution agreements in worker’s compensation claims); S.B. 385 (Mediation of all tort claims exceeding twenty five thousand dollars); S.B. 316 (Binding arbitration for ambulatory medical treatment centers); S.B. 120 (Hearing for teachers before claim is heard at state board of mediation).

Montana

**Bills Enacted** – H.B. 381 (Requires Workers’ Compensation claimant and insurer to attend any mediation conference in person or participate by telephone conference); H.B. 483 (Provides for binding arbitration in labor negotiations involving police officers); H.B. 351 (Requires explanation of improvement arbitration); H.B. 704 (Establishes time requirements for certain DPHHS actions); S.B.
165 (Allows for arbitration clauses in loan agreements); S.B. 311 (Provides for dispute resolution regarding credit information); S.B. 139 (Elimination of mandatory mediation in Department of health and Human Services).

Other Legislation – S.B. 385 (Revises duties of mental health ombudsman to include child protective services); S.B. 411 (Arbitration for outdoor advertising disputes); S.B. 111 (Mediator does not engage in practice of law by giving free legal information); S.B. 516 (Mediation of tax disputes); S.B. 476 (Preparing family law mediation agreement does not constitute the practice of law); S.B. 46 (Duties of mental health ombudsman); S.B. 218 (Actions associated with genetically engineered wheat is exempt from alternative dispute resolution requirements).

Nebraska

Bills Enacted – None.

Other Legislation – N.E. 654 (Amends rules for divorce mediations); N.E. 418 (Provides for arbitration in school reorganizations); L.B. 706 (Mediation of fence disputes).

Nevada

Bills Enacted – A.B. 468 (Amends provisions regarding alternative dispute resolution methods in certain civil actions); A.B. 108 (Revises provisions governing the appointment of a hearing officer in cases involving the employment of licensed educational personnel); S.B. 510 (Makes appropriation expenses relating to arbitration in design and construction of Southern Nevada Veteran’s Home); S.B. 467 (Requires arbitration clauses in certain contracts involving public works); A.B. 219 (Creates Office of Ombudsman for victims of domestic violence).

Other Legislation – A.B. 466 (Repeals mandatory short trial program for dispute resolution); S.B. 284 (Prohibits school district from funding arbitration of disputes with employees); A.B. 207 (Illegally obtained evidence cannot be used by arbitrator).

New Hampshire

Bills Enacted – S.B. 132 (Provides for various changes to law governing marital mediators); S.B. 21 (Establishes voluntary mediated agreements in adoptions); S.B. 63 (Establishes court mediation fund to pay the cost of mediation program in school districts); H.B. 308 (Provides for Alternative dispute resolution proceedings in special education); H.B. 640 (Removes requirement that family law parties consent to mediation as first attempt to resolve differences); H.B. 469 (Regulates disputes between home owners and contractors in residential construction defect cases).

Other Legislation – S.B. 81 (Provides for mediation for homeowners in manufactured housing parks who are confronted with unjustifiable rent increases); H.B. 319 (Requires Department of Environmental Services to arbitrate disputes between municipalities); H.B. 567 (Establishes mediation in family law cases involving children); H.B. 316 (Establishes neutral evaluations in child custody cases); H.B. 648 (Requires mediation in medical injury actions); H.B. 640 (No
requirement for family law parties to consent to mediation); H.B. 529 & H.B. 702 (Mediation of medical malpractice disputes).

**New Jersey**

**Bills Enacted** – A.B. 1820 (Authorizes State Board of Mediation to recognize representatives for employees of private employers who are not covered by the National Labor Relations Act).

**Other Legislation** – S.B. 2247 (Provides for appointment of a BPU Business Ombudsman to assist businesses with energy issues); S.B. 2383 (Amends New Jersey Alternative Procedure for Dispute Resolution Act); S.B. 194 (Authorizes State Board of Mediation to representatives for certain employees by card check and other methods); S.B. 2508 (Authorizes common interest community associations and homeowners to utilize State Office of Consumer Protection for Dispute Resolution); S.B. 2618 (Makes changes to rules regarding grievance arbitration clauses in public employee collective negotiation agreements); A.B. 3471 (Provides for appointment of a BPU Business Ombudsman to assist businesses with energy issues); A.B. 4117 (Amends New Jersey Alternative Procedure for Dispute Resolution Act); A.B. 4053 (Authorizes common interest community associations and homeowners to utilize State Office of Consumer Protection for Dispute Resolution); A.B. 3650 (Repeals law expediting State permits regarding Smart Growth Ombudsman); A.B. 4612 (Collective negotiation agreement for grievances); S.B. 2419 (Arbitration in Prompt Health Care Claims Processing and Reimbursement Act); A.B. 3921 (Mediation of disputes for disabled children's educational rights); S.B. 2344 & A.B. 3855 (Alternative dispute resolution in Uniform Common Interest Ownership Act); A.B. 3815 (Liens on proceeds from arbitration awards).

**New Mexico**

**Bills Enacted** – S.B. 118 (Concerns Unfair Trade Practice mediation requirements); S.B. 314 (Independent Health Care Ombudsman).

**Other Legislation** – H.B. 360 (Concerns Unfair Trade Practice mediation requirements); H.B. 770 (Alternative Dispute Resolution Procedures Act); H.B. 299 (Concerns University of New Mexico Office of Water Rights Ombudsman); S.B. 656 & S.B. 683 (Concerns Alternative Dispute Resolution Act); S.B. 778 (Appropriations for services to support individuals reconstructing families); S.J.M. 62 (Studies Unfair Practices Act mediation); H.B. 5101 (Mediation of charter school disputes).

**New York**

**Bills Enacted** – S.B. 1216 (Extends provisions establishing dispute resolution during collective negotiations); S.B. 5247 (Provides for an interest arbitration award for terms of employment for state police investigators); S.B. 3344 (Jurisdiction for Lemon Law arbitration); S.B. 4837 (Time limits for effectiveness of provisional relief order to conduct an arbitration); S.B. 2173 (Alternative Dispute Resolution for Worker's Compensation Claims).

**Other Legislation** – A.B. 802 (Concerns court modification of arbitrations awards); A.B. 746 (Binding arbitration in security services an security supervisor
negotiations); A.B. 1110 (Allows grievances regarding Commission for the Blind and Visually Handicapped to be submitted to the U.S. Department of Education for arbitration); A.B. 1303 (Establishes arbitration committee to resolve claims under the Medical Care Trust Fund Act); A.B. 1345, A.B. 4369 & S.B. 1171 (Requires hearings against public employees to be resided over by member of American Arbitration Association); A.B. 2190 (Establishes the Office of Ombudsman for Public Schools); A.B. 1894 (Appropriations for Office for the Aging long term care ombudsman); A.B. 145 (Repeals provision relating to binding arbitration for state correctional officers); A.B. 91 (Submits OGS or DOT contracts to binding arbitration); A.B. 92 (Establishes arbitration panel under the Commercial Tenant Protection Act); A.B. 2350 (Extends provisions establishing dispute resolution during collective negotiations); A.B. 2063 & S.B. 1246 (Commercial arbitration panel for commercial leases); A.B. 3321 (Change of venue for arbitration proceeding brought in incorrect county); A.B. 2135 (Regulates securities arbitration); A.B. 2214 (Establishes state committee on public dispute resolution techniques); A.B. 3732 (Fee arbitration for disputes between attorneys and clients); A.B. 3682 (Arbitration is sole remedy in not fault insurance cases); A.B. 3445 & S.B. 4942 (Requires public arbitration panel to consider ability of employer to pay as primary factor); A.B. 5133 (Standards for mediation under Child Custody Reform Act); A.B. 2461 & 5981 (Concerns dispute resolution procedures for county correction officers and deputy sheriff-jailors); A.B. 5397 (Arbitration for improper practice proceedings same as for injunctive relief); A.B. 5394 & S.B. 4476 (Dispute resolution for bargaining between employer and detective-investigators); A.B. 5432 (Concerns arbitration jurisdiction of public employment relations board); A.B. 5631 & S.B. 2749 (Authorizes municipalities to enact local laws for non binding mediation of land use decisions); A.B. 6852 & S.B. 2828 (Creates ombudsman program for environmental advisory board); A.B. 6098 & S.B. 3247 (Binding arbitration in collective bargaining negotiations with forest rangers); A.B. 6229 (Arbitration procedure for violation of fair employment act); A.B. 6517 (Amends law regarding dispute resolution in collective negotiations); A.B. 6524 & 3253 (Public service commission may resolve disputes between property owners and telephone providers); A.B. 6648 & S.B. 3614 (Concerns arbitration for disputes between public employers and correction officer and deputy sheriff’s organized labor); A.B. 6670 (Mediation for matrimonial actions involving children); A.B. 7052 & S.B. 3577 (Increases funding to county dispute resolution centers); A.B. 6927 (Dispute settlement procedures for warranty disputes involving consumer products); A.B. 7110 & S.B. 4001 (Public arbitrations involving Triborough bridge and tunnel authority); A.B. 7187 & A.B. 4216 (Repeals portion of civil service law relating to binding arbitration for members of state police); A.B. 8152 & S.B. 4887 (Dispute resolution procedures for modular home industry); A.B. 7958 (Interest arbitration for member of collective negotiating unit); A.B. 7619 (Collective negotiations between school district and board of education in highly populated cities); A.B. 8123 (Disciplinary grievance arbitration procedures for disputes between employers and employee organizations); A.B. 8411 & S.B. 5473 (Dispute resolution processes in the manufactured homes industry); A.B. 8413 & S.B. 1382 (Dispute resolution for insurance claims); A.B. 8539 (Complaint resolution procedures in the Wireless Telephone Service Consumer Protection Act of 2005); A.B. 4514 (Expedites dispute resolution procedures in claims for medical bills under Worker’s Compensation Law); S.B. 509 (Repeals
binding arbitration for state correctional officers under Civil Service Law); S.B. 1527 (Adopts the Uniform Medication Act); S.B. 1493 (Mandatory arbitration for condominium owners); S.B. 1399 (Mediation of child custody disputes); S.B. 1348 (Parent mediation program for child custody disputes); S.B. 2640 (Authorizes arbitration of decisions regarding maximum rents); S.B. 3780 (Establishes crime victim’s ombudsman); S.B. 5032 (Compulsory binding interest arbitration for Port Authority police officers of New York and New Jersey); S.B. 4822 (Dispute resolution between New York City school district and employee organization); S.B. 5804 (Long term care ombudsman posters posted in adult facilities); S.B. 3542 (Ombudsman for commission on human rights); H.B. 6517 (Dispute resolution for collective negotiations); H.B. 3078 (Arbitration for court officials)

**North Carolina**

* Bills Enacted – H.B. 1015 (Superior Court Clerk can order mediation in matters within clerk's jurisdiction); S.B. 806 (Amends law regarding mediation); H.B. 1319 (Amending Family Law Arbitration Act).

* Other Legislation – S.B. 217 (Med Malpractice Pre-litigation Mediation); H.B. 716 (Mediation of State Employee Grievances); H.B. 1333 (Arbitration Notice to Consumer).

**North Dakota**

* Bills Enacted – S.B. 2282 (Insurance procedures for dispute resolution: health care utilization review agents); S.B. 2044 (State Seed Arbitration Board re enacted)

* Other Legislation – H.B. 1386 (Mandatory ADR for professional malpractice claims).

**Ohio**

* Bills Enacted – S.B. 99 (Revising the definition of ‘Auction Mediation Company’).

* Other Legislation – S.B. 88 (Pilot program mandating arbitration pre filing of medical negligence complaint); H.B. 175 (Contractor has right to cure defects prior to arbitration); H.B. 303 (Repeals adoption of Uniform Mediation Act).

**Oklahoma**

* Bills Enacted – H.B. 1688 (Nursing Home Care Act, provides for dispute resolution); S.B. 873 (Adopts Uniform Arbitration Act); S.B. 1 (Amends Worker’s Compensation Act regarding mediation); H.B. 1963 (Amends Long Term Care Ombudsman Act).

* Other Legislation – H.B. 1624 (Certain arbitration agreements between city employees are appealable); S.B. 792 & S.B. 670 (Dispute resolution for certain civil actions); S.B. 847 & S.B. 876 (Dispute resolution in Commercial Real Estate Brokers Lien Act).
Bills Enacted – S.B. 324 (Confidentiality not required under certain circumstances for terms of mediation agreement involving public); H.B. 2205 (State and federal agencies can provide services of employees for purpose of mediation or facilitation); H.B. 2237 (State lottery commission must adopt ADR process for disputes with lottery game retailers); H.B. 2203 (State agency can adopt Attorney General’s model rules on mediation confidentiality without prior approval of Governor); H.B. 2525 (Prohibits recovery in arbitration for construction defect of the owner rejects prior offer to remedy defect); H.B. 2548 (Mandates arbitration in circuit court proceedings when $50,000 or less in at issue); H.B. 2581 (Amends statutes regarding farming foreclosure mediation); H.B. 2071 (Relating to arbitration in construction claims); H.B. 5107 (Apportions money to long term care ombudsman); H.B. 2566 (Requires mediation be encouraged in juvenile dependency proceeding); S.B. 247 (Eliminates sunset on laws requiring that some schools provide certain dispute resolution services).

Other Legislation – S.B. 319 (Codifies arbitrator criteria for public collective bargaining); S.B. 949 & H.B. 2310 (Establishes requirements for motor vehicle liability arbitration proceedings); S.B. 463 (Mandates arbitration concerning damages from construction, alteration, or repair of residential property except personal injury damages); S.B. 771 (Governor must appoint ombudsman for mental health consumers); S.B. 700 & H.B. 3212 (Can use binding arbitration to resolve disputes over damage suffered from receiving services from a licensed professional); S.B. 776 (Modifies ombudsman services for those receiving medical assistance); S.B. 809 (Creates office of Foster Parent Ombudsmen in Department of Human Services); H.B. 2744 (Must pay fees to defendant if defendant makes offer of compromise that is more favorable than what claimant ultimately receives); H.B. 2767 (Ombudsmen program for veterans); H.B. 3022 (Ombudsmen for small businesses); H.B. 3078 (Human Services must offer parents arbitration as an alternative to court hearing); H.B. 3397 (Prohibits career schools from including arbitration clause in enrollment agreement); H.B. 3470 (Health care providers and recipients can enter into dispute resolution agreements); S.B. 194 (Ombudsman for injured worker must share information related to injured worker with bureau); H.B. 5049 (Appropriating money to Long Term Care Ombudsman for certain expenses); S.B. 5572 (Funding for Long term care ombudsman); S.B. 887 (Mediation for annexation issues); H.B. 3108 (Ombudsman for mental health consumers); S.B. 700 (Binding arbitration for civil actions with licensed professionals).

Pennsylvania

Bills Enacted – None.

Other Legislation – H.B. 239 (Third-party binding resolution of collective bargaining disputes for public school employees); H.B. 340 (Magisterial district judges can serve as arbitrators); H.B. 652 (Amends Procurement code: allows for arbitration); H.B. 750 (Provides for compulsory arbitration); H.B. 669 (Ombudsmen for senior housing); H.B. 907 (Requires certain facilities to coordinate with local long-term care ombudsmen to provide assistance to residents in circumstances involving relocation of residents due to voluntary or involuntary closure of the facilities); H.B. 362 (Civil actions or arbitration proceedings for damages or
indemnity for injury or loss to a dwelling or personal property arising out of or
related to the design, construction, condition, sale or remodeling of a dwelling, for
notice and opportunity to repair, for insurance requirements, for contract of sale,
for contractor notification requirements and for actions of associations); H.B.
1467 & S.B. 656 (Dispute resolution procedures for residential construction de-
fects b/t contractors and homeowners or members of associations); H.B. 1676
(Establishing an informal dispute resolution process for long-term care nursing
facilities and an informal dispute resolution panel within the Department of
Health); H.B. 1791, H.B. 91, H.B. 316, H.B. 437, H.B. 102, H.B. 780, H.B. 1169,
(Provides for mediation regarding zoning disputes); H.B. 1831 (Mandatory arbi-
tration for disputes against a health care provider); S.B. 16 (Compulsory media-
tion for public employees); S.B. 634 (Includes in definition of "unfair methods of
competition" sales contracts that include arbitration provision without separate
acknowledgement form); H.B. 1541 (Dispute resolution for public employee or-
ganizations); H.B. 2223 (Dispute resolution in Act to prevent damage to under-
ground lines); H.B. 2156, H.B. 363 & S.B. 910 (Dispute resolution collective
bargaining for school employees); H.B. 503 (Resolution of disputes between man-
aged care plans and physicians).

**Rhode Island**

**Bills Enacted** – SB 483 & HB 5504 (Motor vehicle arbitration board to arbi-
trate 'lemon law' complaints); SB 631 (Disputes over highway or bridge construc-
tion valued at one hundred thousand dollars or more are exempt from un-
consented arbitration).

**Other Legislation** – S.B. 129 & H.B. 5720 (Relating to Firefighters' arbi-
tration); H.B. 5146 (Guidelines for arbitration of motor vehicle accidents); S.B. 684
and H.B. 5313 (Labor arbitration of municipal employees disputes); H.B. 5455 &
S.B. 800 (Arbitration award cannot be vacated/remanded on the basis of a conflict
with the powers of the director of the department of corrections); S.B. 519, S.B.
677, H.B. 5814, & H.B. 6120 (School committees to seek arbitration of negative
vote of appropriating authority); S.B. 630, H.B. 6427, & H.B. 5721 (Arbitrator
may consider past practice when union contract preserves existing rights, benefits
or practices); S.B. 632, S.B. 629, & H.B. 5601 (Payment of certain costs for com-
pulsory mediation); S.B. 359 (Prohibit vacating arbitration award due to conflict
with managerial duties, statute or statutory authority); S.B. 361 (Labor relations
board can prevent unfair labor practices notwithstanding contractual remedies);
S.B. 483 (Establishes Motor Vehicle arbitration board); H.B. 5427 (Limits the
grounds upon which a labor arbitration award can be vacated); H.B. 6084 (Certif-
ied School Teachers' Arbitration: allow representatives to attend mediation or
arbitration); H.B. 6199 (Party suing state for claims under construction contract
not covered by public works arbitration act to recover prejudgment interest); H.B.
6650 (Arbitration of Labor Controversies).
**South Carolina**

**Bills Enacted** – S.B. 83 (Provides for mandatory mediation and permits binding arbitration in medical malpractice actions); H.B. 3142 (Provides procedures for dispute resolution and disciplinary actions for nurses).

**Other Legislation** – S.B. 36 & H.B. 3013 (Requires mediation before medical malpractice action may be brought to trial); S.B. 336 & H.B. 3355 (Mediate and arbitrate milk disputes); S.B. 420 & H.B. 3381 (If fail to reach agreement, government and outdoor advertising must arbitrate); H.B. 4191 (Volunteer Long Term Care Advocate Program created under the Long Term Care Ombudsman program).

**South Dakota**

**Bills Enacted** – None.

**Other Legislation** – None.

**Tennessee**

**Bills Enacted** – S.B. 1585 (Authorizes mediation panels for comprehensive growth plan disputes); S.B. 1735 & H.B. 1708 (The jurisdiction for any action, claim, lawsuit, arbitration, or mediation in which the parties are a manufacturer and a motor vehicle dealer shall be in Tennessee); S.B. 1090 (Expands implementation of conflict resolution intervention programs in Local Education Agency to include grades three through six); S.B. 1728 (Divorce Referee may designate others to accept process served upon Referee).

**Other Legislation** – S.B. 369 & H.B. 1717 (Requires LEA's and professional employees' organizations to include procedures for binding arbitration); S.B. 1192 & H.B. 1043 (Decreases time period for filing unfixed arbitration award to 6 months); S.B. 1955 & H.B. 1394 (Additional marriage license fees are no longer imposed to pay for mediation and education for divorcing parents); S.B. 1641 & H.B. 1388 (Railroads may man trains in accordance with applicable federal arbitration awards); S.B. 133 & H.B. 84 (Requires condemners to negotiate in good faith with owners and allows use of Rule 31 mediators in negotiations); S.B. 116 & H.B. 2035 (Mediation for firefighters); S.B. 708 (Mediation for police officers).

**Texas**

**Bills Enacted** – S.B. 425 (Colonia Ombudsman Assistance for certain counties); S.B. 1351 (Binding arbitration for ad valorem tax determinations); S.B. 415 (Dispute resolution for State Board of Social Workers); H.B. 1763 (Dispute resolution for groundwater conservation districts); H.B. 1940 (Alternative dispute resolution for contract claims against the State); H.B. 182 (Appeal of certain ad valorem tax determinations through binding arbitration).

**Other Legislation** – S.B. 503 (Makes arbitration award an open record); S.B. 504 (Arbitrators file certain arbitration information); S.B. 505 (Registration of arbitrators); S.B. 949 (Mediation of Texas Railroad Commission proceedings); S.B. 926 (Mediation of landlord/tenant disputes); S.B. 715 (Prohibition of employee arbitration agreements); S.B. 508 (Confidentiality and employment om-
State Legislative Update

Bills Enacted

Utah

**Bills Enacted** – 116 (Authorizes attorneys to issue subpoenas in arbitration cases); H.B. 4 (Divorce mediation program); H.B. 47 (Dispute resolution in Automobile Franchise Act); H.B. 235 (Arbitration to resolve third party automobile accident claims); H.B. 256 (Property rights ombudsman materials).

**Other Legislation** – H.B. 229 (Declining mediation in action against water company); H.B. 263 (Mediation and arbitration in the insurance code).

Vermont

**Bills Enacted** – None.

**Other Legislation** – S.B. 149 & H.B. 329 (Mandatory arbitration for medical malpractice claims); S.B. 146 (Motor vehicle arbitration board); H.B. 32 (Adopts revised Uniform Arbitration Act); H.B. 33 (Adopts Uniform Mediation Act); H.B. 281 (Mandatory mediation for medical malpractice claims); H.B. 333 (Arbitration for defective motor vehicle claims); H.B. 423 (Alternative dispute resolution in construction disputes).

Virginia

**Bills Enacted** – S.B. 1183 (Staffing ratio for long term care ombudsman); H.B. 2054 (Allows rulemaking for the use of alternative dispute resolution by the Virginia Information Technologies Agency).

**Other Legislation** – S.B. 1050 (Ombudsman to protect interests in guardianship orders); S.B. 1069 (Children’s services ombudsman); S.B. 1213 (Long-term care ombudsman volunteer training); H.B. 1694 (Limits attorney fees in arbitration); H.B. 1907 (Medical malpractice mediation).

Washington

**Bills Enacted** – S.B. 5173 (Uniform Mediation Act); S.B. 5733 (Mandatory arbitration); H.B. 1054 (Enacts Uniform Arbitration Act); H.B. 1640 (Ombudsman in mobile home landlord/tenant disputes); H.B. 1848 (Construction defect disputes); H.B. 1606 (Informal dispute resolution).

**Other Legislation** – S.B. 5172 (Uniform Arbitration Act); S.B. 5660 (Ombudsman in mobile home landlord/tenant disputes); S.B. 5649 (Fairness in informal dispute resolution); S.B. 5561 (Dispute resolution for Homeowners Associations); S.B. 5413 (Mandatory mediation for health care providers); S.B. 5873 (Family and children’s ombudsman); H.B. 1814 (Mandatory Arbitration); H.B. 1055 (Uniform Mediation Act); H.B. 1777 (Task force to solve healthcare disputes); H.B. 1783 (Arbitration of memberships and privileges of medical staff);
H.B. 2066 (Water rights dispute resolution); H.B. 1960 (Arbitration in long-term care disputes); H.B. 1134 (Government ombudsman); H.B. 2179 (Dispute resolution in electrical supplier disputes); H.B. 1517 (National Guard ombudsman); H.B. 2083 (Ombudsperson for industrial insurance); H.B. 2076 (Binding interest arbitration for school employees).

**West Virginia**

**Bills Enacted** – None.

**Other Legislation** – S.B. 80, S.B. 478, H.B. 2932 & H.B. 2293 (Binding arbitration for state educational and board of health employees); S.B. 52 (Office of Child Protection Ombudsman); S.B. 544 (Ombudsman in Permitting Information Act); H.B. 2258 (Amends Uniform Arbitration Act); H.B. 2295 (Arbitration for state employees grievances); H.B. 2278 (Mediation and arbitration to resolve impasse in bargaining); H.B. 3292 (Expands arbitration in horse and dog racing laws); H.B. 3194, H.B. 3202, & S.B. 529 (State Long Term Care Ombudsman oversight); H.B. 2982 (Compulsory arbitration for fire department employee disputes); H.B. 2329 (Court may order criminal defendant to contribute to juvenile mediation program); H.B. 2485 (Binding arbitration for municipal personnel matters).

**Wisconsin**

**Bills Enacted** – None.

**Other Legislation** – S.B. 23 & A.B. 39 (Alternative dispute resolution for manufactured homes industry); A.B. 500 (Mediation for determination of navigability of waters); A.B. 518 & A.B. 268 (Arbitrations under Municipal Employment Relations Act); A.B. 369 (Employment Relations Commission has no responsibility to mediate or arbitrate disputes); A.B. 41 (Dispute Resolution in Interstate Compact for Juveniles).

**Wyoming**

**Bills Enacted** – H.B. 101 (Long Term Care Ombudsman Act).

**Other Legislation** – S.F. 141 (Resolution of medical malpractice claims).