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## State Legislative Update

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# STATE LEGISLATIVE UPDATE

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## I. STATE LEGISLATIVE FOCUS

### *A. The Uniform Collaborative Law Act*

**Bill Number:** Alabama House Bill 396, Senate Bill 320

**Summary:** Adopt Act to utilize collaborative law in family law matters

**Status:** Forwarded to Governor on May 20, 2013; remained unsigned

#### *1. Introduction*

A government survey in 2004 reported that 97% of civil cases are settled or dismissed without going to trial.<sup>1</sup> The number of cases tried in court in 2001 was about half the number tried in 1992. In 2006, only 1.3% of civil cases went to trial.<sup>2</sup> The downward trend in cases reaching the dramatic trial that most people associate with lawyers has been so well-documented and discussed that it is barely newsworthy anymore.<sup>3</sup> Many reasons have been given as to the dramatic shift but most relate to the time, cost, and uncertainty of a trial outcome as opposed to a settlement.<sup>4</sup>

This change alters the way attorneys are doing business. Few can fulfill law school dreams of channeling Atticus Finch to change the mind of an entire town through an empowering oral argument. More attorneys are now turning from being the righteous advocate to the resolver of disputes. The use of alternative

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\* The State Legislative Update is an annual article appearing in the fall edition of the Journal of Dispute Resolution and is compiled and written by Journal members. It is designed to provide readers with a listing of pertinent legislation affecting Alternative Dispute Resolution (“ADR”). The Update also provides a more detailed look at certain bills because of their importance and/or novelty within the ADR field. If you have comments or suggestions about this feature, please feel free to e-mail the Journal of Dispute Resolution Editorial Board at [MUlawjournal@missouri.edu](mailto:MUlawjournal@missouri.edu).

1. Gina Keating, *Government survey shows 97 percent of civil cases settled*, PHX. BUS. J. (May 30, 2004), <http://www.bizjournals.com/phoenix/stories/2004/05/31/newscolumn5.html?page=all>.

2. Terry Carter, *The Endangered Trial Lawyer*, ABA (Mar. 1, 2009), [http://www.abajournal.com/magazine/article/the\\_endangered\\_trial\\_lawyer](http://www.abajournal.com/magazine/article/the_endangered_trial_lawyer).

3. See generally, Patricia Lee Refo, *The Vanishing Trial*, 30 A.B.A. J. OF SEC. OF LITIG., 1, 2-4 (Winter 2004), available at [http://www.americanbar.org/content/dam/aba/publishing/litigation\\_journal/04winter\\_openingstatement.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/litigation_journal/04winter_openingstatement.authcheckdam.pdf).

4. Carter, *supra* note 2.

dispute mechanisms such as negotiation, mediation, and arbitration has boomed in response to this shift.<sup>5</sup> This is especially true in cases involving family matters, where a long, litigious battle can hurt familial relations and upset children.<sup>6</sup>

Collaborative law is the result of Minnesota family lawyer Stuart Webb's dismay with the legal system's treatment of dissolution.<sup>7</sup> He wanted to create a new approach that would focus the parties on their mutual interests outside the arena of litigation.<sup>8</sup> Webb thought that if parties were given more opportunity to participate, they would be supportive of the outcome.<sup>9</sup> Collaborative law then grew in popularity as others saw its value for disputes that involved disputes with on-going business or familial relationships such as probate, business, and employment law.<sup>10</sup>

As the use of collaborative law increases, the need for uniform laws to help facilitate this process across state lines grew. In February 2007, the Uniform Law Commission (ULC) began drafting an act to address this need.<sup>11</sup> At the July 2009 meeting, the Uniform Collaborative Law Act (UCLA) was unanimously approved by the Commission and was subsequently submitted to the American Bar Association (ABA) House of Delegates for approval.<sup>12</sup> In March 2010, the house approved the amended act after the ULC made a few small changes per the house's recommendation.<sup>13</sup> Since receiving ABA approval, the UCLA has been passed in eight states, most recently Alabama, and introduced this year in five more.<sup>14</sup>

## 2. The Bill

When the UCLA was approved in 2009 by the Uniform Law Commission, the Drafting Committee defined collaborative law as "a voluntary, contractually based alternative dispute resolution ("ADR") process for parties who seek to negotiate a resolution" instead of going to court.<sup>15</sup> An important feature that sets collaborative law apart from other ADR methods is that both parties are contractually obligated to be represented by an attorney during negotiations.<sup>16</sup> The attorneys during the negotiations may not represent the parties in court and are solely

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5. Julie MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law*, 10 CARDOZO J. CONFLICT RESOL. 1, 2 (2008).

6. Gregory R. Solum, *Collaborative Law: Not Just for Family Lawyers*, 67 BENCH & B. MINN 29, 29 (2010).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Updated Executive Summary: Uniform Collaborative Law Rules and Uniform Collaborative Law Act*, SEC. DISP. RESOL. COLLABORATIVE L. COMM. 1, 1 (2011).

12. *Id.* at 2.

13. *Id.* at 1, 2.

14. *Alabama is the 8<sup>th</sup> state to Enact Uniform Collaborative Law Act*, UNIFORM LAW COMMISSION (June 21, 2013), <http://www.uniformlaws.org/NewsDetail.aspx?title=Alabama%20Enacts%20Uniform%20Collaborative%20Law%20Act>.

15. NAT'L CONF. COMM'RS ON UNIF. ST. L., *Uniform Collaborative Law Act*, 38 HOFSTRA L. REV. 421, 425 (2009) [hereinafter NAT'L CONF. COMM'RS].

16. Norman Solovay & Lawrence R. Maxwell, Jr., *Why a Uniform Collaborative Law Act?*, 2 N.Y. DISP. RESOL. LAW. 36, 36 (2009), available at [http://www.collaborativelaw.us/articles/Why\\_a\\_Uniform\\_Collaborative\\_Law\\_Act.pdf](http://www.collaborativelaw.us/articles/Why_a_Uniform_Collaborative_Law_Act.pdf).

retained for the purpose of negotiating an agreement which satisfies all the parties.<sup>17</sup> Should the parties fail to come to an agreement, the lawyers are disqualified from representing them at a tribunal and the collaborative law process ends.<sup>18</sup>

The foundation of the process is the participation agreement, in which the parties designate their attorneys, agree to work toward a non-judicial resolution and disqualify their current representation if they seek court-based relief.<sup>19</sup> The agreement sets a cooperative tone between the parties and helps them focus on seeking a mutually agreeable resolution instead of a “win” for their side.<sup>20</sup> This mindset is in stark opposition to typical, positional negotiations during which parties begin with extreme demands on each side and then slowly inch toward a settlement.<sup>21</sup>

By engaging in the collaborative law process, the parties show each other that they are serious about working out a deal and that they are willing to put away their weapons for the betterment of both parties. Parties are not completely without recourse, however, should one side appear to revert back to the typical positional approach.<sup>22</sup> The participants know from the beginning that both sides have chosen to make litigation expensive and inopportune, punishing everyone if an arrangement is not made.<sup>23</sup>

The UCLA sets out minimum terms for participation agreements but allows the parties flexibility in other areas of the agreement.<sup>24</sup> The participation agreement must be in writing and state the intention, matter, and scope of the agreement to be resolved through collaborative law.<sup>25</sup> The collaborative lawyers must be identified and confirmed.<sup>26</sup> While additional provisions may be added to the agreement to accommodate the parties’ wishes, these standards may not be waived.<sup>27</sup> The signing of the participation agreement signals the commencement of the collaborative law process for these parties.<sup>28</sup>

Following the ADR tradition, parties may structure these participation agreements as they see fit.<sup>29</sup> Generally, it appears there are two main structures for these arrangements.<sup>30</sup> One way is for the parties to contract only with their attorney, without the attorneys contracting with each other.<sup>31</sup> The other common way to participate in this agreement is for the parties and their attorneys to all sign a contract together, essentially rendering a four-way contract between the two parties and their attorneys.<sup>32</sup>

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17. NAT’L CONF. COMM’RS, *supra* note 15.

18. *Id.*

19. Solovay & Maxwell, *supra* note 16, at 36-37.

20. NAT’L CONF. COMM’RS, *supra* note 15, at 426.

21. *Id.*

22. Scott R. Peppet, *The Ethics of Collaborative Law*, 2008 J. DISP. RESOL. 131, 133 (2008).

23. *Id.*

24. NAT’L CONF. COMM’RS, *supra* note 15, at 474.

25. *Id.*

26. *Id.*

27. NAT’L CONF. COMM’RS, *supra* note 15, at 475.

28. *Id.* at 476.

29. *Id.* at 474. The requirements for such agreements are listed in § 4 of the UCLA but, as seen in the list above, the list is minimal. This allows vast flexibility for the parties. *Id.*

30. Peppet, *supra* note 22, at 134.

31. *Id.*

32. *Id.*

The ABA and state ethics boards which have studied this issue have supported collaborative law in general and the flexibility in the process.<sup>33</sup> Only one state, Colorado, has found collaborative law to be unethical and it is largely due to its concern with the four-way agreement.<sup>34</sup> Colorado argued that when a collaborative lawyer signs such an agreement, they take on duties to parties other than their client.<sup>35</sup> This results in a conflict of interest and disallows lawyers from even beginning this process.<sup>36</sup> Colorado found that agreements solely between parties and attorneys did not create a conflict of interest.<sup>37</sup> The ABA disagreed with Colorado and found that lawyers may participate in collaborative law when it is in line with an informed client's goals.<sup>38</sup>

### 3. Completing the Collaborative Law Process

Due in part to the flexibility that ADR processes afford parties, a collaborative law arrangement could end in a variety of ways. In a best case scenario, the process concludes with an agreement signed by all parties that states the mutually agreed upon, successful resolution of the dispute.<sup>39</sup> Such an agreement should be clear about the matter which was resolved.<sup>40</sup> If the full dispute was not resolved, the agreement should state those remaining issues to be resolved outside the process.<sup>41</sup>

The parties may also agree via the signed agreement to conclude the collaborative law process differently.<sup>42</sup> If the process comes to a successful resolution, the parties may agree to have a court approve all or part of the signed agreement without ending the process; this is the only time a court may be directly involved without automatically ending the collaborative law process.<sup>43</sup>

If the collaborative law process is not successful, one or more parties may terminate at any time for any reason.<sup>44</sup> They are not required to show cause for termination, which emphasizes the voluntary nature of collaborative law.<sup>45</sup> Termination of the agreement may be as simple as one party giving the other notice that the process has ended.<sup>46</sup> Termination also occurs if a party begins a proceeding related to the matter or initiates a similar process through the court system, in

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33. NAT'L CONF. COMM'RS, *supra* note 15, at 441-442.

34. *Ethical Considerations in the Collaborative and Cooperative Law Contexts*, Formal Op. 115, 4-391 (2007),

[http://www.cobar.org/repository/Ethics/FormalEthicsOpinion/FormalEthicsOpinion\\_115\\_2011.pdf](http://www.cobar.org/repository/Ethics/FormalEthicsOpinion/FormalEthicsOpinion_115_2011.pdf).

35. *Id.* at 4-392.

36. *Id.* at 4-393.

37. *Id.* at 4-396-97.

38. ABA COMM. ON ETHICS & PROF'L RESPONSIBILITY, *Ethical Considerations in Collaborative Law Practice*, Formal Op. 07-447, 1, 3 (2007),

[http://www.collaborativelaw.us/articles/Ethics\\_Opinion\\_ABA.pdf](http://www.collaborativelaw.us/articles/Ethics_Opinion_ABA.pdf).

39. NAT'L CONF. COMM'RS, *supra* note 15, at 476.

40. *Id.*

41. *Id.*

42. *Id.* at 477.

43. *Id.*

44. *Id.*

45. *Id.*

46. UNIF. COLLABORATIVE L. ACT § 5(d)(1).

a pending proceeding related to the matter, for example through a motion or a request for hearing.<sup>47</sup>

A collaborative lawyer must give notice to the parties in the case of a withdrawal or a discharge.<sup>48</sup> These actions end the collaborative law process but it may be reinstated if within thirty days of the withdrawal or discharge the newly unrepresented party obtains a new collaborative lawyer and a signed record affirms the continuation of the collaborative law process, confirms the new collaborative lawyer, and shows that the confirmed lawyer agrees to the collaborative process.<sup>49</sup>

Once the process has concluded or terminated, the UCLA does not specify the duties of the collaborative lawyer.<sup>50</sup> The drafting committee ultimately decided that it would be better for the participation agreement to detail these duties.<sup>51</sup> The participation agreement should also cover the kinds of communications allowed between a collaborative attorney who has withdrawn or been discharged and the new successor attorney, as these communications may be substantially different from those typically envisioned by ethics committees.<sup>52</sup>

#### 4. Disqualification of Lawyers

One aspect of collaborative law that makes it unique is that attorneys and their firms are barred from litigating the disputed matter or a substantially related one.<sup>53</sup> This requirement is intended to promote resolution through negotiation and avoid litigation for parties and lawyers alike.<sup>54</sup> Parties will want to work together to avoid the cost and time of finding new counsel and litigating the case.<sup>55</sup> Attorneys will also have a financial incentive to resolve the matter through negotiation as neither they nor their firm will be hired to take the case to court.<sup>56</sup>

Fairness is another concern that has led to disqualification of collaborative attorneys representing clients during litigation.<sup>57</sup> In these informal negotiations, an attorney may learn information about their client or the other client that they would not normally be privy to in a more formal trial setting.<sup>58</sup> This would give that attorney an unfair advantage when the case went to trial.

Disqualification is one of the more controversial pieces of this legislation. Some opponents have expressed concern that disqualification allows one side to fire the other side's lawyer by taking one of many actions to push the negotiations to trial.<sup>59</sup> Others are uncomfortable with disqualification's application to practices

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47. UNIF. COLLABORATIVE L. ACT § 5(d)(2)(A)-(B).

48. UNIF. COLLABORATIVE L. ACT § 5(e).

49. UNIF. COLLABORATIVE L. ACT § 5(g).

50. Solovay, *supra* note 16, at 38. The drafters assumed that state ethics committees would set out these duties, but they are now customarily covered in participation agreements. *Id.*

51. *Id.*

52. *Id.*

53. UNIF. COLLABORATIVE L. ACT § 9(a)-(b).

54. Solovay, *supra* note 16, at 37.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

of law outside family matters.<sup>60</sup> Family lawyers more often engage in one-time issues than other kinds of law and disqualification would not financially injure their practice in the same way.<sup>61</sup> Non-family law attorneys may wish to have a long-term relationship with their client but would be prevented from continuing that relationship if they signed a participation agreement to that effect.<sup>62</sup>

Most commentators feel that the benefits of disqualification outweigh the potential negative effects.<sup>63</sup> Disqualification is a strong incentive to all participants in collaborative law and is a vital reminder to keep negotiations civil and moving forward.<sup>64</sup> Professor Julie MacFarlane suggested that disqualification may not be necessary in the future as this method and tone of settlement steer parties away from traditional adversarial approaches.<sup>65</sup> She posits that once a focus on parties' mutual interests becomes the norm in these matters, the threat of disqualification and litigation will be lessened. Furthermore, if lawyers or parties are not willing to agree to disqualification, a number of other ADR methods may be used to work through problems without trial.<sup>66</sup>

Some jurisdictions have attempted to work around this concern. In Texas, some participation agreements allow arbitration without disqualification in a limited set of circumstances.<sup>67</sup> The parties must agree to arbitration and its purpose is to break a stalemate on a specific issue; afterward, the negotiations with the original counsel may resume.<sup>68</sup> Other similar ADR methods may be used in these situations in the future.

Another concern about disqualification stems from a rule specific to low-income participants.<sup>69</sup> For attorneys representing a low-income client without a fee, such as a legal aid office or law school clinic, they can add an exception to disqualification in the participation agreement.<sup>70</sup> The drafters of the UCLA recognized how difficult it is for impoverished clients to obtain legal services, mainly from a lack of resources offering these services.<sup>71</sup> If negotiations fall through, these clients will have to try to find a second avenue for representation, which would be nearly impossible if an entire legal aid office or law clinic has an imputed disqualification. Some opponents claim that this exception will give an unfair advantage to impoverished clients, but this is outweighed by the hardship placed on parties living in poverty.<sup>72</sup> The drafters noted that they hoped this exception would promote the use and practice of collaborative law in organizations serving underprivileged clients.<sup>73</sup>

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60. Solovay, *supra* note 16, at 37.

61. *Id.*

62. *Id.* at 38.

63. NAT'L CONF. COMM'RS, *supra* note 15, at 426.

64. *Id.* at 427.

65. Solovay, *supra* note 16, at 38 (citing Julie Macfarlane, *The Evolution of the New Lawyer: How Lawyers Are Reshaping the Practice of Law*, 2008 J. DISP. RESOL. 61 (2008)).

66. David A. Hoffman, *Colliding Worlds of Dispute Resolution: Towards a Unified Theory of ADR*, 11 J. DISP. RESOL. 39-40 (2008).

67. Solovay, *supra* note 16, at 38.

68. *Id.*

69. NAT'L CONF. COMM'RS, *supra* note 15, at 452-54.

70. UNIF. COLLABORATIVE L. ACT § 10.

71. NAT'L CONF. COMM'RS, *supra* note 15, at 453.

72. Solovay, *supra* note 16, at 38.

73. NAT'L CONF. COMM'RS, *supra* note 15, at 453.

A similar provision also exempts government parties from being disqualified.<sup>74</sup> If a lawyer of a government instrumentality faced disqualification after the breakdown of negotiations, the entire legal department of that entity would face disqualification on all related matters. The drafters added this section so that taxpayers would not have to bear the cost of paying outside counsel for the litigation.<sup>75</sup> As with the low-income counsel exception, all parties must consent to this exception in writing in the participation contract before the collaborative law process commences.<sup>76</sup>

### 5. Disclosure and Privilege in the UCLA

The UCLA fully embraces the spirit of open communication by all parties to promote meaningful resolution. The Act gives parties an affirmative duty to make a timely and full disclosure of information reasonably related to the matter without formal discovery.<sup>77</sup> Communications between the parties are not confidential under the Act, but the parties may change this in their participation agreement and should be aware of state law on the subject.<sup>78</sup> This openness displays one of the hallmarks of ADR methods, the flexibility of the parties to customize the rules on the playing field. The drafting committee left the question of confidentiality to the parties so that they may contract to disclose some specifics of their dispute to other family members, business partners, or others.<sup>79</sup>

While the issue of confidentiality remains open, the issue of evidentiary privilege is very clear in the Act.<sup>80</sup> Communications made by a party or non-party participant are privileged in later legal proceedings.<sup>81</sup> In adding nonparties, this privilege encompasses neutral experts, financial planners, psychologists, and other professionals so that they are not bound by their communications in the informal collaborative law process later at trial.<sup>82</sup> This again signals the freedom of the parties and others in ADR methods to communicate and resolve the dispute without fear of litigation.

Privilege may be waived or precluded by an exception listed in the Act.<sup>83</sup> This portion of the UCLA is drawn from the Uniform Mediation Act and the exceptions dispense with privilege when it is outweighed by the interests of justice and society.<sup>84</sup> The parties can waive privilege to all or part of their communications in the participation agreement.<sup>85</sup> The underlying evidence relating to the matter is still discoverable and is not included in the privilege.<sup>86</sup>

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74. UNIF. COLLABORATIVE L. ACT § 11.

75. NAT'L CONF. COMM'RS, *supra* note 15, at 454.

76. *Id.* at 453.

77. UNIF. COLLABORATIVE L. ACT § 12.

78. Solovay, *supra* note 16, at 38.

79. *Id.* at 39.

80. *See* UNIF. COLLABORATIVE L. ACT §§ 17-19.

81. UNIF. COLLABORATIVE L. ACT § 17.

82. Solovay, *supra* note 16, at 39.

83. UNIF. COLLABORATIVE L. ACT § 18.

84. Solovay, *supra* note 16, at 39.

85. *Id.*

86. *Id.*



## 6. Conclusion

The growing popularity of collaborative law and other ADR methods in the United States and abroad cannot be ignored. There are likely several factors at work, such as the time and expense of litigation, the overcrowded court system, and the uncertainty of a positive outcome at trial. These factors can be magnified when the dispute revolves around a family issue or one when the parties must continue to interact, because the use of an outside system to resolve a personal matter may feel inappropriate or arbitrary.

Many lawyers have felt this pressure and frustration when dealing with such circumstances, and some have improvised informal methods to get around the difficulties of the court system. The UCLA works to help organize some of those methods and set some ground rules for parties.<sup>87</sup> The Act strives to set some consistency while balancing the flexibility that ADR tactics promote.

Parties must have some reflection before they begin a collaborative law process, however. First, a party must consider if this is truly in their best interest. As an extreme example, the UCLA bans the use of collaborative law in violent or coercive relationships.<sup>88</sup>

The parties must be able to work with the other side and put mutual interests at the forefront of the discussion while making their personal interests secondary. It is vital for the parties to understand the consequences should negotiations fail and give informed consent to all aspects of the arrangement.<sup>89</sup>

Another concern early in the collaborative law process is the flexibility given in the participation agreement. While the Act sets out some minimal guidelines for the contract, this is a new area which has not been studied in depth by legal ethicists.<sup>90</sup> This process is a significant change in the way attorneys and clients relate to each other and the opposing side. Attorneys and clients should proceed cautiously in areas of confidentiality and privilege. In this informal setting, it is easy to be naïve and less careful about one's statements and promises and lawyers in particular should be aware of this pitfall.<sup>91</sup>

After some initial cautions, all parties should feel free to experiment and customize the process to their needs. The flexibility of collaborative law and other ADR methods can be a welcome change to parties who are unfamiliar or uncomfortable with the court system. Furthermore, because parties will be more involved in the progress of resolution, they will also be more invested in the outcome. They will be more satisfied with the end agreement if they felt they had a say in it and personally worked to achieve it. The ability of parties to have more of a say in the entire process will be beneficial for clients and lawyers. As the UCLA continues to gain support in states, it has the potential to strongly affect the way many civil cases are handled.

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87. See UNIF. COLLABORATIVE L. ACT §§ 3-6.

88. UNIF. COLLABORATIVE L. ACT § 15.

89. NAT'L CONF. COMM'RS, *supra* note 15, at 426.

90. See generally Peppet, *supra* note 22.

91. *Id.*

*B. Mandatory Mediation of Foreclosure Actions on Residential Homes at the Request of the Homeowner*

Bill Numbers:	Hawaii House Bill 1417 and Minnesota Senate File 70
Summary:	These bills give homeowners facing foreclosure the option to pursue mediation at their request in an attempt to avoid foreclosure or mitigate damages. The Hawaii Bill is an extension of a previously passed bill expanding foreclosure mediation to judicial foreclosure as well as non-judicial foreclosure.
Status:	Hawaii HB 1417 - Passed second reading as amended in HD 1 and Referred to the Committee on House Finance; Minnesota SF 70 – Referred to Commerce Committee

### *1. Introduction*

Over the past few years, several states have been dealing with the nation's foreclosure problems by enacting legislation to address what has been perceived to be flaws in the foreclosure process.<sup>92</sup> The primary method employed by most state judiciaries is to enact a mediation program that allows homeowners who are facing foreclosure to negotiate with their lender in an attempt to avoid foreclosure or to mitigate the damage from foreclosure.<sup>93</sup> Some states have extended homeowner protections further by explicitly prohibiting dual track foreclosure and requiring lenders to provide struggling homeowners with a single point of contact.<sup>94</sup> The goal of these laws is to create a system where struggling homeowners are given an opportunity to avoid foreclosure. By legislating the process, states hope to ensure that homeowners who have the ability to keep their home under a revised repayment structure are given the opportunity to mediate with their lenders before the lenders complete the foreclosure process.

Beginning in late 2007, the American housing market experienced a significant downturn as a number of factors caused the country to fall into an economic recession. During this time, millions of Americans lost their jobs, and home values plummeted. As a result, banks started to see a significant number of borrowers defaulting on their mortgage payments. The sharp and dramatic increase in loan defaults overwhelmed many mortgage lenders who were set up to handle what had previously been a relatively modest number of foreclosure actions. Banks created mortgage modification programs in an attempt to work with homeowners who had lost the ability to make their loan payments but were still in a position to keep

92. See H.R. 1417, 27th Leg., Reg. Sess. (Haw. 2013); S. 70, 88th Leg., 1st Reg. Sess. (Minn. 2013); S. 492, 188th Gen. Ct. (Mass. 2013).

93. *Id.*

94. See S. 70, 88th Leg., 1st Reg. Sess. (Minn. 2013).

their homes with reduced payments.<sup>95</sup> The government created the Home Affordable Modification Program (HAMP) to give mortgage lenders a partially subsidized option to reduce borrower payments.<sup>96</sup> Unfortunately, most mortgage lenders did not have the capacity to handle the influx of homeowners looking to keep their homes through modified payment structures, and as a result, many homeowners never got the opportunity to prove their ability to make modified payments. Millions of these homeowners lost their homes in the absence of legal remedies. State legislatures saw this as a failure in the system and started proposing legislation to provide additional process to defaulting homeowners.

In 2011, the state of Hawaii was one of the first states to create a foreclosure mediation program when they enacted Act 48, Session Laws of Hawaii 2011.<sup>97</sup> Act 48 created a mediation program that could be employed at the request of the homeowner to negotiate a loan modification to avoid foreclosure or to reach a settlement to mitigate the overall loss associated with foreclosure.<sup>98</sup> By providing a mechanism where lenders are required to mediate before initiating a foreclosure sale, the legislature hoped to reduce the number of foreclosures.<sup>99</sup> One limitation to the 2011 bill was that the option to mediate was limited to non-judicial foreclosures.<sup>100</sup> This meant that homeowners electing to go through court-supervised foreclosure did not have the ability to force their lenders to mediate a potential solution that could allow them to avoid foreclosure. Since loan modification programs had been largely unsuccessful, a vast number of Hawaiians facing foreclosure elected to participate in judicial foreclosure rather than attempting mediation and non-judicial foreclosure.<sup>101</sup> The thought was that a court-supervised foreclosure would help homeowners avoid mistakes that could incur penalties under section 667-60 of the Hawaii Revised Statutes for things like missed deadlines or improper filings.<sup>102</sup> This left the dispute resolution program created by Act 48 largely dormant even though judicial foreclosures were rising dramatically.<sup>103</sup> The legislature attempted to reverse this trend by passing Act 182, Session Laws of Hawaii 2012, which narrowed the application of the foreclosure statutes by specifying the categories of conduct that could get a homeowner in trouble for unfair and deceptive practices.<sup>104</sup> When judicial foreclosure continued to be the predom-

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95. See, e.g. CHASE HOMEOWNERSHIP CENTER, [https://www.chase.com/chf/mortgage/hrm\\_expect](https://www.chase.com/chf/mortgage/hrm_expect) (last visited Aug. 28, 2013). "There are many modification programs available including the government Home Affordable Modification Program (HAMP) or another program offered by Chase or the owner of your mortgage." *Id.*

96. See *Home Affordable Modification Program*, <http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx>.

97. H.R. 1417, 27<sup>th</sup> Leg., Reg. Sess. (Haw. 2013).

98. *Id.* § 1. ("[E]stablished a mortgage foreclosure dispute resolution program to require mortgagees, at the mortgagor's election and prior to conducting a public sale of the subject residential property, to participate in dispute resolution to negotiate an agreement to avoid foreclosure or mitigate damages in cases where foreclosure is unavoidable[.]").

99. See S. 651-776, 26<sup>th</sup> Leg., Reg. Sess. (Haw. 2011) ("Your Committee finds that across the nation, mediation has rapidly grown in popularity as a means to avoid foreclosure.").

100. H.R. 1417, 27<sup>th</sup> Leg., Reg. Sess. § 1 (Haw. 2013).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

inant method employed by defaulting homeowners, the legislature decided that a solution to Hawaii's foreclosure problem would require additional measures.<sup>105</sup>

## 2. The Bills

On January 24, 2013, Angus McKelvey, Karen Awana, Rida Cabanilla, and Romy Cachola introduced House Bill 1417.<sup>106</sup> The primary application of the bill is to give homeowners the ability to require mortgage lenders to engage in mediation upon request of the homeowner in both judicial and non-judicial foreclosures.<sup>107</sup> Mortgage lenders are required to provide the homeowners with notice of the option to mediate, and they are required to send to the mediation a representative with the full authority to offer a loan modification.<sup>108</sup> Failure to do either of these things is considered an unfair and deceptive act under the new law.<sup>109</sup> By applying the dispute resolution program to judicial foreclosures, Hawaiian residents will be able to participate in the mediation of their foreclosure action within the comforting confines of the court's supervision. This should address Hawaiian's interest in having a court supervised process that will help them avoid administrative mistakes, and still give them access to the mediation program that may allow them to keep their home.

The changes brought about by House Bill 1417 reflect the Hawaiian Legislature's commitment to make sure their foreclosure mediation program is more than just a showing of good faith to their residents. The initial measures passed in 2011 proved to be insufficient which was evidenced by the reluctance of homeowners to participate in the program.<sup>110</sup> With the overall improvement to the nation's economy, it may be difficult to gage whether the measures added through House Bill 1417 will completely curtail the problem, but making the program available to Hawaiians in both judicial and non-judicial foreclosure is surely a step in the right direction. The fact that legislatures were clearly paying attention to issues previously missed by Act 48 is a sign that they are committed to creating a system where Hawaiians have every opportunity to avoid foreclosure.

The Minnesota Senate has introduced a foreclosure mediation requirement as part of Senate File 70, which was introduced on January 22, 2013 by Patricia Torres Ray, Ann Rest, Bobby Joe Champion, and Founq Hawj.<sup>111</sup> Under the proposed Minnesota law, mortgage lenders are required to offer mediation to delinquent homeowners and to participate in such mediation at the request of the homeowner.<sup>112</sup> The bill specifies that the notice apprising homeowners of their alternative dispute resolution rights must provide a single point of contact from the bank.<sup>113</sup> This requirement addresses a common problem faced by many home-

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105. *Id.*

106. H.R. 1417, 27th Leg., Reg. Sess. § 1 (Haw. 2013).

107. *Id.*

108. *Id.* § 3.

109. *Id.*

110. *Id.* § 1. "Following the commencement of the dispute resolution program, many mortgagors bypassed the program by instead pursuing foreclosures in court." *Id.*

111. S. 70, 88<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Minn. 2013).

112. *Id.*

113. *Id.*

owners who received conflicting advice from their mortgage lenders due to the difficulty in reaching the same bank representative across multiple inquiries.

Another major obstacle to home retention faced by millions of struggling homeowners was the practice of dual tracking.<sup>114</sup> Dual tracking occurs when a lender purports to initiate loan modification negotiations while simultaneously proceeding with foreclosure procedures.<sup>115</sup> This practice caused millions of homeowners across the country to lose their house to foreclosure while in the middle of modification negotiation proceedings. The Minnesota Senate addresses this problem by including language in Senate File 70 that explicitly prohibits the practice of dual tracking.<sup>116</sup> Under the new law, Minnesotans hope to be able to receive a decision on their loan modification application before their house is sold at a foreclosure auction.<sup>117</sup> Once a homeowner has requested mediation, all foreclosure processes must immediately come to a halt for 60 days or until a final decision on loan modification is reached, whichever comes first.<sup>118</sup> If a mortgage lender fails to abide by this provision and forecloses on a home prior to the mandatory time allowance, the homeowner has a civil cause of action against the mortgage lender for violating the dual tracking provision.<sup>119</sup>

As can often be the case, legislative intent does not always result in a bill that solves all of the problems facing a particular issue. Although it may be admirable that the Minnesota Senate thought to include the dual tracking prohibition in the language of this bill, requiring only a 60-day hold regardless of whether a loan modification decision has been made has the potential to do little more than delay the mortgage lenders ability to foreclose on homeowners who have yet to receive a loan modification decision. This bill is a step in the right direction for providing homeowners with safeguards in the foreclosure process, but whether it fully addresses the problems facing homeowners through the foreclosure crisis of 2008 through 2013 will not be known until the program has been in existence long enough to show tangible results. With the upswing in the economy and the reduction in the number of foreclosure actions, we may never know if this bill will curtail the kind of problems facing the housing market over the last five years.

### 3. Conclusion

Laws such as the aforementioned bills in Hawaii and Minnesota aim to provide homeowners with additional legal process at a time when financial constraints would otherwise limit their options. Foreclosure most commonly occurs when homeowners fail to make several consecutive mortgage payments, which is typically the direct result of an extreme financial hardship. The hardship that causes a homeowner to fall behind on their payments is likely to eliminate the

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114. See Sharon Schmickle & Sarah Rose Miller, "Dual Tracking" Trap: Owners Lose Homes while Trying to Modify Mortgages, MINN. POST, (Mar. 21, 2013), <http://www.minnpost.com/politics-policy/2013/03/dual-tracking-trap-owners-lose-homes-while-trying-modify-mortgages>.

115. S. 70, 88th Leg., 1st Reg. Sess. § 4 (Minn. 2013). ("Dual tracking" means a lender beginning or continuing a mortgage foreclosure under this chapter while the lender is considering a request by the borrower for a modification of the mortgage loan.").

116. *Id.* § 4.3.

117. *Id.*

118. *Id.*

119. *Id.* § 4.4.

option for the homeowner to hire legal counsel to advise them of their rights as to the possession/dispossession of their real property. As a result, many homeowners lose their homes without ever being aware that they may have had options to keep it. With the passing of mandatory foreclosure mediation laws, state governments have taken an important first step in ensuring that their citizens are aware of their rights and have the opportunity to exercise options that may allow some of them to maintain home ownership.

### *C. North Dakota and Land Use Alternative Dispute Resolution Disfavoring Landowners*

Bill Numbers:	North Dakota House Bill 1352; North Dakota House Bill 1407
Summary:	Both bills involved land use of some sort including disputes of mineral and surface owners and pipeline easement
Status:	H.B. 1352 was adopted April 16, 2013; H.B. 1407 failed to pass on February 5, 2013

#### *1. Introduction*

There were many noticeable trends within certain states<sup>120</sup> spanning across different areas of the law. Many of the bills in the past year involved family law and juvenile system issues that touched on mediation as a mechanism.<sup>121</sup> Although the states varied in their approaches and outcomes, the overlap of the law and alternative dispute resolutions methods is noteworthy. One state, North Dakota, had an interesting smatter of bills that centered on environmental issues that resulted in different outcomes.<sup>122</sup> Of all the bills collected over the last legislative session in the aforementioned states; this article will focus on how some states took on family law issues as well as the curious case of North Dakota.

Of the states in this particular survey, the most interesting development occurred in the legislation of North Dakota. Two bills that were introduced over the course of the past legislation session dealt with landowner concerns involving mineral developers and pipeline easement applicants.<sup>123</sup> One of the bills passed<sup>124</sup> while the other did not<sup>125</sup>; however, one could argue that the outcomes cut against the interests of the individual landowner.

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120. This article contemplated legislation from a variety of different states including: Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, and Ohio.

121. *See, e.g.*, H.R. 555, 63rd Leg. Reg. Sess. (Mont. 2013); H.R. 76, 63rd Leg. Reg. Sess. (Mont. 2013); L.B. 555, 103rd Leg., 1st Sess. (Neb. 2013); and L.B. 342, 103rd Leg., Reg. Sess. (Neb. 2013).

122. *See, e.g.*, H.R. 1352, 63rd Leg., Reg. Sess. (N.D. 2013); and H.R. 1407, 63rd Leg., Reg. Sess. (N.D. 2013).

123. *See* H.R. 1352, 63rd Leg., Reg. Sess. (N.D. 2013); and H.R. 1407, 63rd Leg., Reg. Sess. (N.D. 2013).

124. *Id.*

125. *See* H.R. 1407, 63rd Leg., Reg. Sess. (N.D. 2013).

## 2. The Bills

This bill deals with the mediation between a landowner, whom has minerals below the surface, and a developer who wishes to purchase the land for harvesting of the minerals.

H.B. 1352 was signed by the Governor on April 15, 2013 and filed with the Secretary of State a day later.<sup>126</sup> Representatives Hunskor, Drovdal, Monson, and Trottier introduced the bill, on January 18, 2013, with the intent to create and enact a new section to chapter 38-11.1 as well as a new section to chapter 47-16 of the North Dakota Century Code.<sup>127</sup> The bill relates to the mediation and resolution of mineral developer and surface owner disputes and similar title disputes.<sup>128</sup> Throughout the process, the bill received overwhelming support, and did not receive one 'nay' vote from either the House or Senate while being passed.<sup>129</sup>

The bill provides that if the mineral developer furnishes the owner with an offer to purchase the land and the offer is rejected, either party may require the other party to submit the matter to mediation within one year after the offer is made. This legislation allows the potential developer to mediate the issue even if the offer is flatly rejected.<sup>130</sup> Also, the parties are to split the costs of the mediation.<sup>131</sup> In Section 2, the mineral developer may even dispute the owner's title to the land and provide them with a description of the conflict and proposed resolution.<sup>132</sup>

The overwhelming support for this bill should not come as a surprise, especially in reviewing the next bill and its outcome. At a glance, one can make a quick assessment that this legislation is 'pro-business' as a developer can subject a landowner to mediation even if an offer is rejected.<sup>133</sup> This landowner then has to split the cost of the mediation, even if they have no interest in selling the land. Next, the article will discuss a bill that involves a different land issue concerning consumer pipeline easements that too appears to disfavor individual landowners.

This bill would have created a new Act that would protect landowners in pipeline easement disputes relating to their ownership of land on which an applicant would like to place a gas or liquid transmission line.<sup>134</sup> However, the bill did not pass.

Representatives J. Kelsh and W. Amerman and Senators J. Dotzenrod and R. Wardner introduced H.B. 1407 in the North Dakota House on January 21, 2013.<sup>135</sup> After its introduction, the bill was referred to the Energy and Natural Resources Committee.<sup>136</sup> The Committee held its first hearing of the bill on January 31,

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126. See H.R. 1352, 63rd Leg., Reg. Sess. (N.D. 2013).

127. *Id.*

128. *Id.*

129. *Id.* The final tally for the House was: 93 'yeas', 0 'nays', and 1 'absent'. The final tally for the Senate was: 47 'yeas', 0 'nays', and 0 'absent'.

130. *Id.*

131. H.R. 1352, 63rd Leg., Reg. Sess. (N.D. 2013).

132. *Id.* § 2.

133. *Id.* § 1.

134. H.R. 1407, 63rd Leg., Reg. Sess. (N.D. 2013).

135. *Id.*

136. *Id.*

2013.<sup>137</sup> Less than a week later on February 5, 2013, the bill failed to pass in the House.<sup>138</sup>

Section 1 of the proposed bill laid out a pre-conditional step the applicant had to submit to if they were interested in an easement on the landowner's property.<sup>139</sup> The proposed easement had to be delivered to the landowner in a certain manner and procedure.<sup>140</sup> The proposed applicants had to adhere to section 1.<sup>141</sup> Section 1 had requirements that the easement proposal must be delivered ninety (90) days prior to any public hearing,<sup>142</sup> contain specific language and also language that informed the landowner of their rights,<sup>143</sup> among a variety of other things.<sup>144</sup> It lastly stated that the easement proposal must be accompanied by the language in Section 2.<sup>145</sup> Section 2 provided mediation services by and through the North Dakota mediation service that was previously mentioned in H.B. 1352.<sup>146</sup> Section 3 of the proposed bill had even more pro-landowner language that would have provided the landowner with more legal protections including action against applicants that harass landowners by the Attorney General.<sup>147</sup>

This bill clearly favors the landowner and provides them with protection from easement applicants even at a legal level in Section 3.<sup>148</sup> The failure of this bill should be seen as another blow to individual landowners. Those affected negatively by the passing of H.B. 1352 may also very well be negatively affected by the failure of H.B. 1407. Whereas mineral landowners are subject to mediation even after rejecting an offer for their land, here the landowners do not get their chance at initiating mediation when trying to protect their land from easement applicants. Both bills discuss the same service, the North Dakota mediation service, but the two outcomes are at odds and disfavorable to the individual landowners. It is a curious trend, but it is clear that the North Dakota legislature is

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137. *Id.*

138. *Id.* The final tally for the House was: 20 'yeas' and 72 'nays'.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* § 1(c).

143. *Id.* § 1(a).

144. *Id.* § 1(c)-(f).

145. *Id.* § 1(g). Section 2 states, "At the request of a landowner or the applicant for a certificate or permit for a gas or liquid transmission line or associated facilities, each party shall submit to mediation by the North Dakota mediation service. As a condition for an applicant to exercise eminent domain over the landowner, thirty days after the North Dakota mediation service has provided an mediation report, the applicant must request an informal hearing before the commission and be found by the commission, by majority decision, to have negotiated in good faith. If the applicant is found not to have negotiated in good faith, the commission shall request the applicant to submit to mediation by the North Dakota mediation service for a period of time no less than sixty days and that period of time is the same period of time before which the applicant may request another informal hearing on whether the applicant negotiated in good faith." *Id.*

146. *See id.* § 2.

147. *See id.* § 3. Section 3 stated, "[i]f the terms of the easement or easement option are not in accordance with this section or if the commission determines, by majority vote, that applicant has engaged in harassment, threats, intimidation, misrepresentation, deception, fraud, or unfair tactics, is acquiring or attempting to acquire an easement or easement option, the commission shall inform the attorney general and the attorney general shall investigate. The attorney general may bring an action for a landowner under section 49-22-16." *Id.*

148. *Id.*



favoring the development of their land, rather than protection of the individuals who rightly own it.

#### *D. The Use of Mediation in Family Law and the Juvenile System*

Bill Numbers:	Montana House Bill 555; Montana House Bill 76; Nebraska Legislative Bill 561; Nebraska Legislative Bill 342
Summary:	The Montana bills discuss mediation's role in family law disputes and the Nebraska bills touch on the use of mediation in the juvenile system
Status:	Montana H.B. 555 and Montana H.B. 76 were both adopted April 30, 2013; Nebraska L.B. 561 was approved by the Governor on May 29, 2013; and Nebraska L.B. 342 has been indefinitely postponed but was ultimately amended into L.B. 561.

#### *1. Introduction*

Another trend I observed was the use of mediation in family disputes and juvenile system services. Two of Montana's recent bills have centered on the mechanism of mediation in family disputes. In Nebraska, two bills involve the juvenile system and how mediation is utilized.

#### *2. The Bills*

Montana H.B. 555 was introduced on January 1, 2013, by Ellie Boldman Hill.<sup>149</sup> The bill was introduced for the purpose of revising mediation laws as they related to family law and domestic violence.<sup>150</sup>

The bill revises the old Act in a variety of ways. It sets out to clarify the circumstances in which a court may order mediation to resolve amended parenting disputes.<sup>151</sup> It also revises to require parties to have provided informed consent before a court can authorize mediation when the court suspects physical, sexual, or emotional abuse.<sup>152</sup> Further, the bill requires that mediators used in domestic violence mediations have certain qualifications, and are required to be trained in mediating domestic violence cases, as well as have experience mediating family related disputes.<sup>153</sup>

This bill is a major step in the right direction to reform and refine Montana's family law and domestic violence procedures as they relate to mediation. The bill now requires consent on behalf of the parties in certain circumstances as well as competent and experienced mediators in domestic violence mediations.<sup>154</sup> Any

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149. H.R. 555, 63rd Leg. Reg. Sess. (Mont. 2013).

150. *Id.*

151. *Id.*

152. *See id.* § 2(2).

153. *See id.* § 4.

154. *See id.* § 2(2).

resident of Montana that may need these services can appreciate the bill's passing; the importance of which, is evident by the legislature of Montana's overwhelming support.

Similarly, Carolyn Pease-Lopez introduced Montana H.B. 76, on August 1, 2012.<sup>155</sup> The bill was introduced to establish an independent office of "child and family ombudsman."<sup>156</sup> Although this bill does not so much deal with mediation, it is important because it recognizes the need to create a separate office of confidential ombudsman to "serve to protect the interests and rights of Montana's children and families."<sup>157</sup> The bill insists the department receive adequate funding and be staffed by competent ombudsman.<sup>158</sup> The bill never received much opposition and was signed by the Governor as H.B. 555 on April 30, 2013.

One can glean from the passing of these two bills, that the state of Montana holds its mediation and ombudsman services in high regard for utilizing these methods in such serious circumstances like family law and domestic disputes. These two bills both successfully make great strides in attempting to refine and improve their system.

The two bills from Nebraska are very similar, and both concern the juvenile system and mediation procedures; however, one bill was passed<sup>159</sup> and one was postponed indefinitely.<sup>160</sup> However, portions of the postponed bill were saved by being amended into the L.B. 561.<sup>161</sup>

Nebraska L.B. 561 was introduced on January 23, 2013, by Representative Ashford.<sup>162</sup> The bill's intent was to change provisions and transfer responsibilities regarding the juvenile justice.<sup>163</sup>

In all, the bill's legislation tallies over fifty (50) pages. Similar to the below bill, L.B. 561 prescribed mediation in certain juvenile system situations.<sup>164</sup> For instance, if a parenting plan is not developed by the parties in a child custody disputes, then the case must be sent to mediation or another form of alternative dispute resolution as provided in the Parenting Act.<sup>165</sup> Unlike the below bill, L.B. 561 was ultimately adopted and signed by the Governor on May 29, 2013.<sup>166</sup>

Nebraska L.B. 342 was introduced on January 18, 2013, by Representative Coash.<sup>167</sup> The bill's intent was to change the right to counsel provisions under the Nebraska Juvenile Code.<sup>168</sup> However, on June 5, 2013, the bill was indefinitely

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155. H.R. 76, 63rd Leg. Reg. Sess. (Mont. 2013).

156. *Id.*

157. *See id.* § 2(1).

158. *See id.* § 4.

159. S. 561, 103rd Leg., Reg. Sess. (Neb. 2013)(enacted).

160. S. 342, 103rd Leg., Reg. Sess. (Neb. 2013).

161. S. 561, 103rd Leg., Reg. Sess. (Neb. 2013)(enacted); S. 342, 103rd Leg., Reg. Sess. (Neb. 2013) (portions of S. 342 were amended into S. 561 on June 5, 2013, days after the Governor had already approved it).

162. S. 561, 103rd Leg., Reg. Sess. (Neb. 2013)(enacted).

163. *Id.*

164. *Id.*

165. *See id.* § 42-364.

166. *Id.*

167. S. 342, 103rd Leg., Reg. Sess. (Neb. 2013).

168. *Id.*

postponed.<sup>169</sup> On the same date, portions of the bill were amended into L.B. 561, which was approved by the Governor days before.<sup>170</sup>

The bill is extremely similar in its intent to L.B. 561 and had language dealing with mediation and even provided for mediation in certain situations under the Parenting Act.<sup>171</sup>

Unfortunately, this bill never came to fruition even though it had a multitude of positive aspects that would implement alternative dispute resolution methods, including mediation, in difficult situation such as child custody disputes.<sup>172</sup> On the bright side, the intent of both bills were very similar and portions of L.B. 342 were amended into L.B. 561.

Similar to Montana, one can glean that Nebraska takes mediation and other alternative dispute resolution methods seriously if it implements them in tough circumstances concerning the juvenile justice system and under the Parenting Act.<sup>173</sup> Unfortunately, only one of the bills mentioned was adopted, but both had very good intentions and those efforts should not go unnoticed.<sup>174</sup>

### 3. Conclusion

In the end, there were numerous noticeable trends throughout the past legislative session within the states I surveyed. Some states, like Montana and Nebraska, used mediation to further refine and reform their procedures concerning family law disputes and the juvenile justice system. Others, like North Dakota, had a spotty record on the utilizing of certain means. Both bills of which, seem to cut against the individual landowner in different types of property disputes.

Whatever the use, alternative dispute resolution remains to this day, a very attractive measure for state legislatures when trying to tackle difficult issues.

#### *E. Alternative Dispute Resolution in Workers Compensation Systems: Oklahoma Senate Bill 1062 and Tennessee Senate Bill 200*

Bill Number:	Oklahoma Senate Bill 1062; Tennessee Senate Bill 200
Summary:	OK: Signed by Governor June 6, 2013; TN: Signed by Governor April 29, 2013
Status:	To create an agreed-upon procedure audit for certain eligible political subdivisions and to eliminate the Auditor of State's exemption from filing a rule summary and fiscal analysis with proposed rules

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169. *Id.*

170. S. 561, 103rd Leg., Reg. Sess. (Neb. 2013)(enacted).

171. S. 342, 103rd Leg., Reg. Sess. § 42-364(1)(a) (Neb. 2013).

172. *Id.*

173. S. 561, 103rd Leg., Reg. Sess. (Neb. 2013)(enacted); S. 342, 103rd Leg., Reg. Sess. (Neb. 2013). Both bills mentioned the Parenting Act.

174. S. 342, 103rd Leg., Reg. Sess. (Neb. 2013) was indefinitely postponed.

### 1. Introduction

With governors' signatures affixed to Oklahoma Senate Bill 1062 and Tennessee Senate Bill 200, two more states have now joined the overwhelming majority in using an administrative system to resolve workers' compensation issues.<sup>175</sup>

Oklahoma Governor Mary Fallin gave her signature to Senate Bill 1062 on May 6, 2013, with little pomp and circumstance.<sup>176</sup> Despite not having a bill-signing ceremony,<sup>177</sup> Governor Fallin did issue a press release under the headline "Gov. Fallin Signs into Law Historic Workers' Comp Reform: Bill Reduces Costs to Business, Ensures Injured Workers Treated Fairly."<sup>178</sup> The release expresses Governor Fallin's and legislative leaders' support for the reform; Governor Fallin stated in part that the bill overhauls the currently flawed system, resulting in reduced costs to businesses and fair treatment for workers.<sup>179</sup> However, the final vote on the bill in the Oklahoma Senate showed lingering opposition, as twelve Oklahoma Senators voted against passage.<sup>180</sup> Some Democrats opposing the measure seemingly disagreed with Governor Fallin's characterization of fairness to workers, claiming instead that the Bill would reduce workers' benefits.<sup>181</sup>

175. Thomas Harman, *New Workers' Compensation Laws Could Carry Major Overhauls*, BESTWEEK – A.M. BEST (May 22, 2013, 9:13 AM), <http://www3.ambest.com/ambv/bestnews/newscontent.aspx?refnum=165607&AltSrc=14>, reprinted at PROGRAMBUSINESS.COM (May 23, 2013), <http://www.programbusiness.com/News/New-Workers-Compensation-Laws-Could-Carry-Major-Overhauls>. See also ALA. CODE § 25-5-81 (1992), available at <http://www.legislature.state.al.us/codeofalabama/1975/25-5-81.htm> ("In case of a dispute between employer and employee or between the dependents of a deceased employee and the employer with respect to the right to compensation under this article and Article 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil action in tort between the parties.") (emphasis added).

176. Michael McNutt, *Oklahoma's Workers' Compensation Measure Signed Into Law*, NEWSOK (May 7, 2013), <http://newsok.com/oklahoma-workers-compensation-measure-signed-into-law/article/3807094>; Press Release, The Office of Governor Mary Fallin, Gov. Fallin Signs into Law Historic Workers' Comp Reform (May 6, 2013), available at [http://www.ok.gov/triton/modules/newsroom/newsroom\\_article.php?id=223&article\\_id=11749](http://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=223&article_id=11749) [hereinafter Gov. Fallin Press Release].

177. McNutt, *supra* note 176.

178. Gov. Fallin Press Release, *supra* note 176.

179. *Id.* ("... Senate Bill 1062 completely overhauls our flawed workers' comp system, dramatically reducing the costs to businesses and freeing up private-sector resources that can be invested in jobs rather than lawsuits. Additionally, our reforms ensure injured workers are treated fairly and given the medical care needed to return to work. This is an important pro-growth policy that will help us attract jobs and build a stronger and more prosperous Oklahoma."). *Id.* Comments by Senate President Pro Tem Brian Bingman and House Speaker T.W. Shannon may be found in Governor Fallin's Press Release at the website listed in note 176, *supra*.

180. S. 1062, 54th Leg., 1st Reg. Sess. (Okla. 2013).

181. McNutt, *supra* note 176. ("Democrats who opposed the measure said it is unfair to injured workers because it will reduce their benefits... Democrats during debate on the measure earlier also cautioned that small companies would see their workers' compensation insurance rates increase because bigger companies would choose to opt out of being in the state system."). One of the controversial aspects of the Oklahoma Bill is the thought that the provision "would allow employers to opt out of traditional workers' compensation and provide alternative work injury benefit plans that meet minimum statutory criteria." David DePaolo, *OK & TN Reforms: Someone Will Get Gored*, DEPAOLO'S WORK COMP WORLD BLOG (Feb. 20, 2013, 4:46 AM), <http://daviddepaolo.blogspot.com/2013/02/ok-tn-reforms-someone-will-get-gored.html>. See also S. 1062, 54th Leg., 1st Reg. Sess. §§ 121-133 (Okla. 2013).

Tennessee Governor Bill Haslam signed Senate Bill 200, “The Workers’ Compensation Reform Act of 2013,”<sup>182</sup> on May 7, 2013,<sup>183</sup> at Clarksville Foundry, “one of the state’s oldest ongoing business enterprises dating back to the Civil War.”<sup>184</sup> Governor Haslam likewise issued a press release that highlights five points or accomplishments of the legislation: (1) quicker disbursements of benefits; (2) improved medical treatment; (3) clearer standards and fairer application of law; (4) ability to file administrative claims, and; (5) an ombudsmen program to assist unrepresented workers.<sup>185</sup> As in Oklahoma, there was opposition to the Tennessee reforms, not only by legislators,<sup>186</sup> but also by “independent business owners” and union members, who say system changes are “like driving a stake through the heart of workers statewide.”<sup>187</sup>

Despite political or philosophical differences in how people view the Oklahoma and Tennessee reforms, both sides may be missing important components of these pieces of legislation. Within these new administrative systems are provisions for alternative dispute resolution (“ADR”), and these ADR provisions have taken a backseat to a lot of reporting on the major overhauls of the workers’ compensation systems.<sup>188</sup> This state legislative focus will provide a brief sampling of approaches that states have used in workers’ compensation disputes, and, more importantly, will highlight some ADR provisions in Oklahoma Senate Bill 1026 and Tennessee Senate Bill 200.

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182. S. 200, 108th Gen. Assem., Reg. Sess. § 103 (Tenn. 2013).

183. Press Release, Office of Governor Bill Haslam, Haslam Signs Workers Compensation Reform Bill In Clarksville (May 7, 2013), available at <https://news.tn.gov/node/10661> [hereinafter Gov. Haslam Press Release].

184. Michael Adams, *Tennessee Governor Signs Workers’ Compensation Bill*, INS. J. (May 9, 2013), available at <http://www.insurancejournal.com/news/southeast/2013/05/09/291459.htm>.

185. Gov. Haslam Press Release, *supra* note 183. (“Provides disability benefits to an injured worker quicker; Improves the quality of medical treatment; Provides a clearer standard for causation and a neutral application of the law; Allows employees to file claims in a court within the Division of Workers’ Compensation rather than trial court; And creates a new ombudsman program in the division to help unrepresented employees and employers receive the assistance they need.”)

186. *Roll Call: TN SB0200 | 2013-2014 | 108th General Assembly*, LEGISCAN, <http://legiscan.com/TN/rollcall/SB0200/id/262944> (last visited Aug. 14, 2013) (A final vote for passage in the Tennessee House of Representatives was 68-24).

187. Gary B. Gray, *Opponents of Workers’ Comp Legislation Say It Hurts Workers*, JOHNSON CITY PRESS, Mar. 13, 2013, <http://www.johnsoncitypress.com/article/105381>. It should be noted that groups and organizations also opposed the Oklahoma legislation. See Patrick B. McGuigan, *OK Business Group Counters AFL-CIO Critique of Likely Workers’ Compensation Reforms*, WATCHDOG, Apr. 26, 2013, <http://watchdog.org/81845/ok-business-group-counters-afl-cio-critique-of-likely-workers-compensation-reforms/>.

188. See Adams, *supra* note 184; Gray, *supra* note 187; McGuigan, *supra* note 187; Cydney Baron, *Firefighters Oppose Worker’s Comp Bill*, THE PRYOR TIMES (Mar. 30, 2013), <http://pryordailytimes.com/local/x1340801296/Firefighters-oppose-worker-s-comp-bill>. However, at least one blogger addresses arbitration provisions in Oklahoma Senate Bill 1062. See David DePaolo, *OK Reform – Arbitration Lacks Protections*, DEPAOLO’S WORK COMP. WORLD BLOG (Feb. 21, 2013, 4:06 AM), <http://daviddepaolo.blogspot.com/2013/02/ok-reform-arbitration-lacks-protections.html>.

## 2. ADR Approaches in Workers Compensation Disputes

Fred B. Kotler's<sup>189</sup> report on "ADR for Workers Compensation in Collective Bargaining Agreements" described three ways to use ADR in workers' compensation, even outside of a collective bargaining agreement.<sup>190</sup> First, several states use ADR in resolving claims.<sup>191</sup> Second, the major ADR methods states have adopted are "mediation, arbitration, and use of an ombudsman."<sup>192</sup> Finally, some states allow a combination of approaches to be utilized.<sup>193</sup> Mediation<sup>194</sup> for workers' compensation disputes is used in approximately seventeen states.<sup>195</sup> Arbitration<sup>196</sup> is used in at least eight states.<sup>197</sup> Ombudsman programs<sup>198</sup> are used in fifteen states.<sup>199</sup> Kotler noted that Oklahoma uses ombudsman programs, and Tennessee uses mediation and ombudsman approaches. Because his research was published as recently as April 2012, his assertions are current and mostly correct. However, Oklahoma will now be added to the states using arbitration.<sup>200</sup>

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189. Fred B. Kotler is a Lecturer and Research Associate with the School of Industrial and Labor Relations, Cornell University. Fred B. Kotler, J.D. / Vita, available at <http://www.ilr.cornell.edu/directory/fbk2/download/vita/VitaFBK2December2012.pdf>.

190. Fred B. Kotler, *Alternative Dispute Resolution [ADR] for Workers Compensation in Collective Bargaining Agreements: An Overview*, 3 (April 1, 2012) (on file with Cornell University ILR School), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1043&context=reports>. Kotler notes that states may use ADR to try and alleviate traditional concerns, such as "rising health care costs, the volume of contests claims, delays in processing those claims, concerns about the accessibility and adequacy of medical care, and the cost of litigation." *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Kotler defines mediation as: "[a] neutral, third-party mediator is charged with bringing the parties closer, to facilitate a process that may lead to settlement of a dispute. The mediator does not, however, have the power to make a decision that settles the dispute." *Id.*

195. The seventeen states as identified by Kotler are: "Colorado, Florida, Iowa, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oregon, South Dakota, Tennessee, Vermont, and West Virginia." *Id.* (citing Part 14 PROCEDURAL LAW, Chapter 125 ALTERNATIVE DISPUTE RESOLUTION, 7-125 *Larson's Workers Compensation Law* Section 125.02, LexisNexis).

196. Kotler defines arbitration as: "[a] neutral, third-party arbitrator hears and makes a determination based on evidence presented by the parties. Arbitration is typically less formal than court proceedings or administrative hearings. The arbitrator is usually experienced in workers compensation issues." *Id.*

197. The eight states as identified by Kotler are: "California; Illinois; Massachusetts; Minnesota; New York; Ohio; Oregon; and Texas." *Id.*

198. "An ombudsman [or ombudsperson] is charged with providing information, conducting fact-finding, and guiding the injured worker through procedures. The aim is to protect the injured worker's interests, and to help the worker make well-informed and considered choices for handling of a claim. Early and timely intervention by an ombudsman has the likely effect of reducing the number of number of [sic] issues that might otherwise require resolution." *Id.* (citation omitted).

199. The fifteen states as identified by Kotler are: "Alabama, Arizona, Arkansas, California, Florida, Kansas, Kentucky, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, [and] Texas." *Id.* (emphasis added).

200. See *infra* note 205.

### 3. The Bills

Because Oklahoma and Tennessee were two of the last states to switch to an administrative workers' compensation system,<sup>201</sup> their legislation has received a lot of attention from politicians and journalists this year.<sup>202</sup> Unfortunately for minds intrigued by ADR, most of the talk has shied away from ADR provisions found in the newly enacted bills.<sup>203</sup> This section seeks to shine light on some neglected ADR provisions included in Oklahoma Senate Bill 1026 and Tennessee Senate Bill 200.

#### a. Oklahoma – Workers' Compensation Arbitration Act

Tucked away at the end of a more than 250-page bill<sup>204</sup> is the "Workers' Compensation Arbitration Act."<sup>205</sup> The Workers' Compensation Arbitration Act ("WCAA") provides three circumstances in which agreements to arbitrate injury claims will be enforceable.<sup>206</sup> These circumstances include when (1) the employer gives notice to the employee, as well as the workers' compensation insurance provider, and the employer also files an ADR program with the Commission; (2) "[T]he employers' Certified Medical Plan files an alternative dispute resolution program"; or (3) the agreement will be governed by the Federal Arbitration Act.<sup>207</sup>

The WCAA provides a broad construction for how a person gives notice, has knowledge of notice, and is deemed to have received notice.<sup>208</sup> A person gives notice when he/she takes action "reasonably necessary to inform the other person."<sup>209</sup> A person has knowledge of notice "if the person has knowledge of the notice or has received notice."<sup>210</sup> Finally, a person is deemed to have received

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201. See Harman, *supra* note 175.

202. See *supra* notes 175, 176, 181, 183, 187, and 188.

203. See *supra* note 188.

204. See DePaolo, *supra* note 181 ("Senate Bill 1062, the 260-page reform proposal filed by Bingman, was approved by the Senate Judiciary Committee..."); Baron, *supra* note 188 ("Oklahoma currently has the sixth highest number of workers' compensation claims in the country but this 270-page bill, authored by Sen. Brian Bingman, calls for extensive reform.").

205. S. 1062, 54th Leg., 1st Reg. Sess. §§ 134-162 (Okla. 2013). Only a selection of sections from this Act will be discussed. This is not to suggest these sections are more important than any others.

206. *Id.* §135.

207. *Id.* ("All agreements to arbitrate claims for injuries covered by the Administrative Workers' Compensation Act shall be valid and enforceable in this state when: 1. The employer provides notice of the existence of an agreement to arbitrate to both the employee and the employer's workers' compensation insurance provider; and 2. The employer files an alternative dispute resolution program with the Commission, as defined in the Administrative Workers' Compensation Act; 3. The employers' Certified Medical Plan files an alternative dispute resolution program with the Commission, as defined in the Administrative Workers' Compensation Act; or 4. The agreement is subject to the Federal Arbitration Act."); see also DePaolo, *supra* note 188.

208. S. 1062, 54th Leg., 1st Reg. Sess. §§ 136 (Okla. 2013); see also DePaolo, *supra* note 188.

209. S. 1062, 54th Leg., 1st Reg. Sess. §§ 136(A) (Okla. 2013) ("Except as otherwise provided in the Workers' Compensation Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.").

210. *Id.* § 136(B).

notice by meeting one of two requirements; either the notice comes to the “person’s attention” or it is delivered to a place closely associated with that person.<sup>211</sup>

The WCAA also addresses the effective dates on agreements to arbitrate, with January 14, 2014, serving as a line of demarcation.<sup>212</sup> Further provisions dictate what parties may or may not waive,<sup>213</sup> begin to describe “applications for judicial relief,”<sup>214</sup> and advise on what to do if a party refuses to arbitrate.<sup>215</sup>

The initiation of arbitration proceedings, including notice of arbitration, is likewise provided for, with subsequent sections explaining the method(s) for appointing the arbitrator and for conducting arbitrations.<sup>216</sup> For example, if the parties cannot agree on an arbitrator and a party makes a motion to the Commission, then the Commission will appoint the arbitrator.<sup>217</sup> Section 151 illuminates the permissive powers of the arbitrator, including the power to issue subpoenas, and Section 153 requires that the arbitrator make a record of the award granted.<sup>218</sup> Section 156 describes what may occur post-arbitration, with following sections clarifying questions such as how an award may be vacated,<sup>219</sup> modified or corrected,<sup>220</sup> and what actions may be appealed.<sup>221</sup>

While some believe the WCAA will reduce costs associated with resolving workers’ compensation disputes, there is also concern about potential oversights or small gaps in the arbitration provisions.<sup>222</sup> For example, “there is no employer size limit to the arbitration provision.”<sup>223</sup> Whether these alleged gaps will have a significant impact on the use of arbitration in workers’ compensation claims will

211. *Id.* § 136(C) (“A person shall be deemed to have received notice when it comes to the person’s attention or notice is delivered at the person’s place of resident or place of business, or at another location held out by the person as a place of delivery of the communications.”).

212. *Id.* § 137 (“The Workers’ Compensation Arbitration Act governs an agreement to arbitrate made on or after January 1, 2014. The Workers’ Compensation Arbitration Act governs an agreement to arbitrate made before January 1, 2014, if all the parties to the agreement or to the arbitration proceeding agree in writing.”).

213. *Id.* § 138; *see DePaolo, supra* note 188 (“[W]hile parties may not waive the substantive provisions of the underlying workers’ compensation act (i.e. provisions dealing with medical treatment or indemnity) they may otherwise waive some of the due process or legal procedure protections of the underlying act that arbitration provisions do this quite nicely without any further agreement between the parties.”).

214. S. 1062, 54th Leg., 1st Reg. Sess. § 139(A) (Okla. 2013).

215. *Id.* § 141.

216. *Id.* §§ 143, 145, 149. For example, Section 149 requires that “Arbitrations shall be conducted in a fair and expeditious manner. The authority conferred on arbitrators includes, without limitation, the power to hold conferences and hearings with the parties, determine the admissibility, relevance, materiality and weight of any evidence, as well as ask questions of any witnesses during the proceedings.” *Id.* § 149(A).

217. *Id.* § 145(A).

218. *Id.* §§ 151, 153. Note that the powers of the arbitrator are not solely found in Section 151. Other Sections indicate that the arbitrator may modify or correct an award in certain circumstances. *Id.* § 154. Furthermore, the arbitrator may award benefits, attorney fees, and other appropriate remedies. *Id.* § 155.

219. *See id.* § 157.

220. *See id.* § 158.

221. *See id.* § 161.

222. *See DePaolo, supra* note 188.

223. *Id.*



likely not be known until information on the system is published by the Workers' Compensation Commission.<sup>224</sup>

*b. Tennessee – Workers' Compensation Mediators & Ombudsman Programs; Training*

Section 76 of Senate Bill 200 requires the establishment of “a workers' compensation mediators program.”<sup>225</sup> Mediators are required to mediate all disputes in the resolution of a benefits claim; inform parties of their rights, keep documents in a claim file and, if a settlement is reached, write the settlement.<sup>226</sup> While there is a requirement that both the employer and employee are represented at the mediation by someone with authority to settle, there is no express requirement that a settlement be reached.<sup>227</sup> If a settlement is not reached, the mediator must write a “dispute certification notice.”<sup>228</sup> Where there is no dispute certification notice, it may be unlikely the parties will receive a hearing by a workers' compensation judge on that issue.<sup>229</sup>

A workers' compensation ombudsman program is provided for under Section 77.<sup>230</sup> The purpose of the ombudsman program is similar to the purpose of the mediators program.<sup>231</sup> However, the ombudsman program is solely for people or organizations not represented by an attorney.<sup>232</sup> The relationship between the ombudsman and the unrepresented party is protected in at least one way, as “[n]o statement, discussion, evidence, allegation or other matter of legal significance

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224. S. 1062, 54<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. § 25 (Okla. 2013) (“The Commission shall publish annually, on an aggregate basis, information pertaining to the distribution of workers' compensation insurance premiums, losses, expenses, and net income to be compiled from reports required to be filed with the Insurance Commissioner ... The Commission shall also publish in the annual report information regarding aggregate workers' compensation benefit distribution to claimants, medical providers, and attorneys, if available.”).

225. S. 200, 108th Gen. Assem., Reg. Sess. § 76(a) (Tenn. 2013). The purpose of the establishment of such a program is “to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights, resolving disputes, and obtaining information pertinent to workers' compensation laws and practices.” *Id.*

226. *Id.* § 76(b)(1)-(b)(4). If a settlement is reached, it must be approved by a workers' compensation judge. “Any settlement reached during alternative dispute resolution proceedings shall not become effective, until it has been approved by a workers' compensation judge in accordance with the procedure provided in this chapter.” *Id.* § 76(b)(4).

227. *Id.* § 76(c)(1).

228. *Id.* § 76(d).

229. *See id.* §§ 76(d)(2) & § 82(b)(1). Where a dispute certification notice has been issued and the claim has gone to a workers' compensation judge, “the workers' compensation judge may grant permission for parties to present issues that have not been certified by a workers' compensation mediator only upon a finding that: (A) The parties did not have knowledge of the issue prior to issuance of the dispute certification and could not have known of the issue dispute reasonable investigation; and (B) Prohibiting presentation of the issue would result in substantial injustice to the petitioning party.” *Id.* §§ 82(b)(1)(A)-(B).

230. *Id.* § 77(a).

231. *Id.* The establishment of such a program is “to assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, resolving disputes, and obtaining information available under workers' compensation laws.”

232. *Id.*

that occurs in the presence of an ombudsman shall be admissible as evidence in any other proceeding.<sup>233</sup>

Although ADR provisions are peppered throughout the Workers' Compensation Reform Act of 2013 ("WCRA"),<sup>234</sup> one final Section should be mentioned. Section 81 transparently requires education and training programs for those with decision-making authority.<sup>235</sup> Such requirements begin before one assumes his/her duties in that he/she must have "formal training and education" on applicable laws and regulations.<sup>236</sup> The requirements continue throughout his/her duration of service, requiring at least an annual seven hours of workers' compensation training.<sup>237</sup> Whether all states require such training or not, it is somewhat comforting to know that in the complicated regime of workers compensation, those who make the decision(s) in Tennessee are at least required by the WCRA to receive some training and participate in continuing education.

#### 4. Conclusion

Although Oklahoma and Tennessee are some of the last states to implement an administrative system for workers' compensation disputes, and thus had plenty of states' systems to examine in creating reforms, it will likely be at least a year until information regarding costs saved or system effectiveness is reported. Because much of that reporting may be about how many claims were paid and in what amounts, information regarding the use of ADR approaches and the effectiveness of those approaches may be slow to surface. Regardless of this lack of quickly forthcoming information, there is some solace in knowing that at least one state implementing this type of administrative regimen requires a minimum amount of training and education. This requirement will better ensure that the system's decision-makers have a firm understanding of such a complex system, which may lead to a heightened prospect of consistent application of the legislation. After all, if decisions are not consistently made in accordance with the legislation, then there is little chance to effectuate the administrative system's purpose of improving business conditions while providing a fair system to employees.

233. *Id.* § 77(b). Note that the provision does not speak of information being completely confidential. Also note that based on the express language of the provision, the statement need not be made to the ombudsman, but rather just "in the presence of the ombudsman." *Id.* (emphasis added).

234. See, e.g., S. 200, 108th Gen. Assemb., Reg. Sess. §§ 17, 33, 42, 43, 54, 74, 76, 77, 81, 82, 97, and 99 (Tenn. 2013).

235. *Id.* § 81. ("The administrator shall institute and maintain an education and training program for workers' compensation mediators, workers' compensation judges, the chief judge, ombudsmen, and the judges of the workers' compensation appeals board in order to assure that these persons maintain current and appropriate skills and knowledge in performing their duties.")

236. *Id.* ("Before assuming their duties, all persons selected to serve or appointed...shall be provided formal training and education, which shall include training on the department's workers' compensation system, the Tennessee workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation.")

237. *Id.* ("In addition, such persons shall attend at least seven (7) hours of training each year that is focused on workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation.")

## II. HIGHLIGHTS

### A. Alabama House Bill 396, Senate Bill 320<sup>238</sup>

Marcel Black introduced the Uniform Collaborative Law Act (UCLA) to the Alabama House of Representatives, on March 7, 2013.<sup>239</sup> The UCLA was quickly adopted on May 23, 2013.<sup>240</sup> The UCLA provides a guide for implementing collaborative law, an alternative dispute resolution method for family law, which is increasingly popular.<sup>241</sup> Alabama is the eighth state to enact the UCLA, following Hawaii, Nevada, Ohio, Texas, Utah, Washington, and the District of Columbia.<sup>242</sup>

The UCLA outlines the circumstances for which collaborative law is appropriate and the procedures to carry out or end such an agreement.<sup>243</sup> Collaborative law can be used for most family law situations, excluding those that arise from a coercive or violent relationship.<sup>244</sup> The collaborative law process begins when the parties sign a participation agreement and concludes when either the matter is resolved or one or both parties terminate the agreement.<sup>245</sup> When the parties cannot come to an agreement, then the lawyers for both sides must resign.<sup>246</sup> The UCLA does not affect the standards of professional responsibility for the attorneys.<sup>247</sup>

### B. Alaska Senate Bill 35<sup>248</sup>

Senator Dennis Egan introduced a collective bargaining bill supporting alternative dispute resolution between employers and employees on January 25, 2013.<sup>249</sup> The bill has since been sent to the Labor and Commerce Committee for further discussion. The bill, Senate Bill 35, replaces several provisions of the Alaska Workers' Compensation Act and provides for opportunities for mediation and negotiation between the parties.<sup>250</sup> This bill increases the options for workers to successfully handle injury and other labor disputes outside the courtroom.

Senate Bill 35 allows parties that disagree over a workers' compensation claim to resolve their differences through mediation, although they cannot be compelled to settle.<sup>251</sup> The mediations are to be informal and conducted by a workers' compensation employee.<sup>252</sup> The bill also allows collective bargaining

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238. H.R. 396, 2013 Leg. Reg. Sess. (Ala. 2013).

239. *Id.*

240. *Id.*

241. *Alabama Enacts Uniform Collaborative Law Act*, UNIF. LAW COMM'N (June 21, 2013), <http://www.uniformlaws.org/NewsDetail.aspx?title=Alabama%20Enacts%20Uniform%20Collaborative%20Law%20Act>.

242. *Id.*

243. H.R. 396, 2013 Leg., Reg. Sess. (Ala. 2013).

244. *Id.* at § 15.

245. *Id.* at § 5.

246. *Id.* at § 4(7).

247. *Id.* at § 13.

248. S. 35, 28<sup>th</sup> Leg., 1st Sess. (Alaska 2013).

249. *Id.*

250. *Id.*

251. *Id.* at § 1(i)(1)(A).

252. *Id.* at §§ 1(i)(1)(B)-(C).

agreements to be negotiated between employers and labor organizations through mediation or arbitration.<sup>253</sup> Awards and agreements under this bill have the same force and effect as those normally conducted under a hearing officer.<sup>254</sup>

### C. Hawaii House Bill 1417<sup>255</sup>

Angus McKelvey, Karen Awana, Rida Cabanilla, and Romy Cachola introduced Hawaii House Bill 1417, on January 24, 2013<sup>256</sup>. After passing its first reading, it was referred to the Consumer Protection and Commerce Committee and the Judiciary Committee.<sup>257</sup> Both committees recommended that the bill be passed with amendments with none of the committee members recommending that the bill be rejected.<sup>258</sup> It passed its second reading on February 13, 2013, and was then referred to the Finance Committee.<sup>259</sup> The bill will give homeowners facing foreclosure the option to pursue mediation at their request in an attempt to avoid foreclosure or mitigate the damages.<sup>260</sup> Previously, Act 48, Session Laws of Hawaii 2011 attempted to provide mediation options for Hawaiians facing foreclosure, but the majority of homeowners chose to forego the mediation process in favor of judicial foreclosure. Typically, this was out of fear of facing penalties related to minor violations of the mortgage foreclosure law.<sup>261</sup> House Bill 1417 is designed to give homeowners the option to request mediation in judicial foreclosures as well as non-judicial foreclosures, in an attempt to reduce the number of Hawaiians losing their homes to foreclosure.<sup>262</sup> Banks are required to provide notice to the homeowners of the option to mediate foreclosure disputes before initiating a foreclosure action in court.<sup>263</sup> Failure to provide notice or have proper loan modification authorization will be considered an “unfair and deceptive” act by the foreclosing bank.<sup>264</sup>

### D. Massachusetts Senate Bill 492<sup>265</sup>

Karen Spilka introduced Massachusetts Senate Bill 492, on January 14, 2013.<sup>266</sup> On January 22, 2013, the Senate referred the bill to the Joint Committee on Financial Services and the House concurred.<sup>267</sup> The bill establishes a foreclosure mediation program to give homeowners the option to attempt to avoid foreclosure by mediating a modification to their loan.<sup>268</sup> The bank is required to pro-

253. *Id.* at § 2(a)(1).

254. *Id.* at § 2(a)(1)(E).

255. H.R. 1417, 27<sup>th</sup> Leg., Reg. Sess. (Haw. 2013).

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.* at §1.

261. H.R. 1417 at § 1.

262. *Id.*

263. *Id.* at §3(a)(8)(A).

264. *Id.* at §3(a).

265. S. 492, 188th Gen. Ct., (Mass. 2013).

266. *Id.*

267. *Id.*

268. *Id.* at § 1(c)-(d).

vide notice of the option to mediate at the time they send a Notice of Default to homeowners who are delinquent on their payment.<sup>269</sup> The homeowner then has thirty days to return the enclosed foreclosure mediation request form.<sup>270</sup> If the homeowner returns the form within thirty days then the bank must suspend the foreclosure process until they can show that they have engaged in a good faith attempt to modify the homeowner's loan.<sup>271</sup> Potential remedies to modify the loan include a reduced interest rate, principal reduction, or extended amortization.<sup>272</sup>

### *E. Montana House Bill Number 469<sup>273</sup>*

Steve Fitzpatrick, of Montana's 20<sup>th</sup> District, introduced Montana House Bill Number 469, on February 13, 2013.<sup>274</sup> The bill sets out a procedure that allows parties to arbitrate construction lien disputes. The bill refers to the Uniform Arbitration Act and states that parties entering into construction lien agreements are now subject to the Act.<sup>275</sup> The bill is very concise and clearly details that at any time after the lien is entered into, either party may pursue arbitration in the event of a dispute.<sup>276</sup> Shortly after its introduction on February 18, 2013, the Business and Labor Committees passed the bill.<sup>277</sup> The bill went through several drafts and readings and was eventually passed by the Senate on March 21, 2013, after the third reading.<sup>278</sup> Ultimately, the Speaker of the House signed the bill on March 22, 2013, and it became law without the Governor's signature on April 5, 2013.<sup>279</sup> After being passed, the bill is now known as Montana Legislature Chapter 152.<sup>280</sup>

### *F. North Carolina House Bill Number 278<sup>281</sup>*

North Carolina House Bill Number 278 was initially filed on March 12, 2013, by a multitude of representatives including: Beverly M. Earle, Marvin W. Lucas, Deborah K. Ross, Susan C. Fisher, Michael H. Wray, Pricey Harrison, Kelly M. Alexander, Jr., Rosa U. Gill, Chuck McGrady, Jonathan C. Jordan, Rodney W. Moore, and Duane Hall.<sup>282</sup> The bill is a new act that encourages parties to a dispute, involving certain matters related to real estate under the jurisdiction of a homeowners' association, to initiate mediation to try to resolve the dispute prior to filing a civil action.<sup>283</sup> The mediation is voluntary and may be initiated by either the association or a member of the homeowners' association by contacting the

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269. *Id.* at § 1(c).

270. *Id.*

271. S. 492 at § 1(e).

272. *Id.* at § 1(d).

273. H.R. 469, 63<sup>rd</sup> Leg., Reg. Sess. (Mont. 2013).

274. *Id.*

275. *Id.*

276. *Id.*

277. H.R. 469, 63<sup>d</sup> Leg., Reg. Sess. (Mont. 2013).

278. *Id.*

279. H.R. 469, 63<sup>rd</sup> Leg., Reg. Sess. (Mont. 2013) (enacted).

280. *Id.*

281. H.R. 278, 2013 Gen. Assem., 1st Sess. (N.C. 2013).

282. *Id.*

283. *Id.* at § 1(f).

North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina.<sup>284</sup> Over the course of its life, the bill was referred to several Committees including the House Judiciary Committee and the Senate Committee on Commerce.<sup>285</sup> After being passed on the third reading in the House on April 23, 2013, it was sent to the Senate.<sup>286</sup> The Senate passed the third reading on June 11, 2013.<sup>287</sup> The House ratified the bill the next day and presented it to the Governor.<sup>288</sup> The Governor signed the bill on June 19, 2013, which then became House Chapter Law Session 2013-127.<sup>289</sup>

### G. Oklahoma Senate Bill 1062<sup>290</sup>

Oklahoma Senate Bill 1062 was originally authored by Senator Bingman and had a first reading in the Senate on February 4, 2013.<sup>291</sup> As the bill worked its way through Oklahoma's legislature, copious Senate and House members served as coauthors.<sup>292</sup> Referred to the Senate Judiciary Committee on February 13, 2013, and after being amended, the bill was read a third time and passed by the Senate 34-12 on February 27.<sup>293</sup>

The House held a first reading of the bill on March 5, 2013, before referring it to their Judiciary Committee.<sup>294</sup> After some further amendments and a subsequent third reading, the House passed the measure 74-24.<sup>295</sup> The bill was sent to the Governor on April 30, 2013, and was approved by the Governor on May 6.<sup>296</sup>

Entitled "Workers' Compensation; creating the Administrative Workers' Compensation Act", the bill's overarching purpose was undoubtedly to create new administrative laws governing Oklahoma's Workers' Compensation system.<sup>297</sup> Specific to arbitration and mediation, the bill provides that all "intentional tort or other employers' liability claims may proceed through the appropriate state of Oklahoma, mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law."<sup>298</sup>

### H. Tennessee Senate Bill 200<sup>299</sup>

Tennessee Senators Norris, Johnson, and Kelsey authored Tennessee Senate Bill 200.<sup>300</sup> The bill was introduced on January 30, 2013, and after going through

284. *Id.* at § 1(c).

285. H.R. 278, 2013 Gen. Assem. 1st Sess. (N.C. 2013).

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. S. 1062, 54<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Okla. 2013).

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. S. 1062, 54<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Okla. 2013).

297. S. 1062, 54<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Okla. 2013).

298. *Id.* at § 118 (E).

299. S. 200, 108<sup>th</sup> Gen. Assem., 2013 Sess. (Tenn. 2013).

300. *Id.*

three committees, on April 1 the Senate passed the bill 28-2.<sup>301</sup> The House took up and completed its action on the bill on April 11, 2013.<sup>302</sup> After first substituting its version of the bill, and then withdrawing that action, the House continually appeared to quibble with the bill; activities abound show attempted amendments, some of which were tabled and withdrawn.<sup>303</sup> On April 15, 2013, the Senate approved the two surviving amendments that had been passed, 68-24, by the House. After a signature from Speakers of the Senate and House, the bill was sent to the Governor on April 18, 2013, and signed on April 29, 2013.<sup>304</sup>

This bill either deletes and replaces, or amends sections of Tennessee code.<sup>305</sup> Part of the bill's replacement language involves the creation of a division of workers' compensation within the Tennessee Department of Labor and Workforce Development.<sup>306</sup> In a more overarching form, the bill recognizes "Tennessee's endeavor to reform the workers' compensation law in a manner designed to ensure the health and safety of Tennessee workers and to promote Tennessee as an attractive destination for business."<sup>307</sup>

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301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. S. 200, 108th Gen. Assem., 2013 Sess. (Tenn. 2013).

306. *Id.* at § 1(a)(1)-(2).

307. *Id.* at § 2(a).

## III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced during the first eleven months of 2012 concerning alternative dispute resolution.

## ALABAMA

**Bills Enacted:** None.

**Other Legislation:** S.B. 435 (Extensively amends workers' compensation by streamlining and updating the process); S.B. 56 (Gives foster parents more rights, notice, training, and other resources); H. B. 396 (Adopts Act to utilize collaborative law in family law matters); S.B. 320 (Adopts Act to utilize collaborative law in family law matters – Senate version of House Bill 396).

## ALASKA

**Bills Enacted:** S.B. 12 (Creates Act for state and public entity procurement rules); H.B. 4 (Creates AK Gasoline Development Corp. and establishes rules and funding).

**Other Legislation:** S.B. 35 (Lets employers and employees use mediation and arbitration to settle disputes); H.B. 127 (Sets out rules, powers, compensation, and staff of ombudsman); S.B. 72 (Sets out rules, powers, compensation, and staff of ombudsman – Senate version of HB 127); H.C.R. 3 (Recommends that governor work to preserve state sovereignty).

## ARIZONA

**Bills Enacted:** H.B. 2005 (Increases rules for political subdivision entities); S.B. 1089 (Provides for applicability of law to arbitration bonds).

**Other Legislation:** H.B. 2414 (Makes sweeping changes to collective bargaining for public employees); S.B. 1124 (Senate version of house bill 2414); S.B. 1400 (Adds mediation program to foreclosures); H.B. 2624 (House version of senate bill 1400); H.B. 2415 (Increases state employees' organizational rights); SB 1187 (Senate version of house bill 2415); H.B. 2512 (Amends trust code significantly); S.B. 1375 (Presents health care changes); S.B. 1362 (Presents small changes to health insurance practices); H.B. 2046 (Presents changes for Arizona health care cost containment system); H.B. 2238 (Adds law for claims to medical expenses and recovery of them); H.B. 2413 (Defines "representation expenses"); S.B. 1125 (Same as house bill 2413); H.B. 2614 (Re-defines "claim" and adds arbitration to collection agency laws).

## ARKANSAS

**Bills Enacted:** None.



**Other Legislation:** H.B. 1205 (Gives relief to employees with cause); H.B. 1844 (Reforms foreclosures and increases jobs of circuit clerks); S.B. 1189 (Creates program for creation of guides to navigate consumers through health insurance); S.B. 917 (Creates limits on liability for death at construction sites and makes them unenforceable in contracts); H.B. 1508 (Promotes competition between insurance providers to keep costs low); S.B. 1170 (Enters compact with other states to protect consumers and develop standards); H.B. 2099 (Helps ensure fairness between providers to protect consumers); H.B. 2091 (Adds emergency clause to production contracts).

#### CALIFORNIA

**Bills Enacted:** None.

**Other Legislation:** A.B. 802 (Governs private arbitration companies and their disclosures); S.B. 25 (Subjects agricultural employers to same rules in labor code); S.B. 752 (Senate version of bill 383); S.B. 752 (Another senate version of bill 383); A.B. 1205 (creates mobile-home residency law mediation act); A.B. 537 (Adds some ADR practices to public employment); S.B. 655 (Amends fair employment and housing act, and allows plaintiff unfair practice claim); A.B. 74 (Adds force to existing ADR labor disputes); S.B. 66 (earlier version of bill 74); S.B. 609 (Creates account for long term care ombudsman program); A.B. 1032 (Requires mediation for school facility disputes before going to court); A.B. 993 (Sets more regulations for arbitrators in contractor disputes); A.B. 1254 (Sets different time limits on accepting arbitration deals); A.B. 436 (Applies doctrine of comparative fault to inverse condemnation actions in all situations); S.B. 476 (Repeals and adds sections to insurance code concerning fees); A.B. 1141 (Revises 2 Acts related to franchises, allows parties to agree to arbitration); S.B. 572 (Provides mechanism for disputes with in-home supportive services authority); S.B. 39 (Develops clean energy employment and student advancement act); A.B. 1162 (Requires universities to negotiate student loans with banks); A.B. 638 (Permits employee to get expedited hearing if they have illegally uninsured employer); S.B. 71 (Omnibus bill that covers private schools, bond indebtedness, disaster relief, and more); A.B. 2 (Another house version of senate bill 2).

#### COLORADO

**Bills Enacted:** H.B. 1134 (Gives homeowners associations a center to regulate and investigate); S.B. 25 (Allows firefighters to organize and bargain collectively); H.B. 1305 (Gives governor money in case state loses tobacco arbitration).

**Other Legislation:** S.J.R. 17 (Recognizes October as “conflict resolution month” in Colorado); S.B. 281 (Resolves disputes for tax credits and sets deadlines for their resolution).

## CONNECTICUT

**Bills Enacted:** H.B. 6549 (Creates mediation program for disputes between claimants and insurance companies over catastrophic events); H.B. 6355 (Set forth changes to homeowner laws to protect them, increases mediation); H.B. 6699 (Changes community service availability, expands criminal mediation, and increases wait to solicit criminal clients); H.B. 6651 (Streamlines Brownfield remediation programs and statutes).

**Other Legislation:** H.B. 6378 (Changes property and casualty insurance to include more arbitration); H.B. 6450 (Increases fee for submitting grievances to Board of Mediation and Arbitration); H.B. 6449 (Concerns disclosure of performance reviews of Board of Labor Relations and Board of Mediation and Arbitration to certain people); H.B. 6371 (Earlier version of house bill 6449); S.B. 449 (Encourages settlement of malpractice claims prior to trial); H.B. 6612 (Increases duties of Office of Healthcare Advocate and Insurance Commissioner); H.B. 6419 (Extends foreclosure mediation program for two more years); H.B. 6666 (Establishes pilot program with probate court and judicial branch for mediation between condominium owners and associations); S.B. 453 (Prohibits mortgagees from recouping attorney's fees for legal services after third mediation); S.B. 454 (Requires lender to send someone with settlement authority to foreclosure mediation); H.B. 6142 (Prevents arbitration panel from considering reserve funds in determining municipality financial ability); H.B. 5238 (Creates rigid timelines for binding municipal arbitration); S.B. 451 (Amends statutes to implement use of binding arbitration in medical malpractice cases); S.B. 296 (Senate version of house bill 6142); H.B. 5093 (Allows municipalities to reject a contract without arbitration in times of high unemployment); H.B. 6263 (Helps people facing foreclosure or mortgage loan modifications); S.B. 1075 (Requires construction companies to report nonwage payments to other construction companies); H.B. 6173 (Reforms debt collection in the state to protect consumers); S.B. 1072 (Eliminates Gaming Policy Board, moves all responsibilities to Department of Consumer Protection).

## DELAWARE

**Bills Enacted:** H.B. 29 (Creates commercial real estate broker's lien); H.B. 40 (Extends Automatic Residential Mortgage Foreclosure Mediation Program for another 4 years).

**Other Legislation:** H.B. 181 (Adds support proceedings to family court cases without mediation).

## FLORIDA

**Bills Enacted:** H.B. 553 (House version of senate bill 553); S.B. 530 (Senate version of house bill 693); H.B. 55 (Concerns procedural changes to bringing a claim for unfair trade practices).

**Other Legislation:** S.B. 860 (Revises requirements for workers' compensation); H.B. 693 (Re-designates code name and adds applicability notes); S.B. 1212 (Reorganizes ombudsman office under state agency); H.B. 1015 (House version of senate bill 1212); S.B. 308 (Creates Abusive Workplace Environment Act to protect workers); S.B. 1312 (Requires negligence claims to go to arbitration with limited damage awards); H.B. 775 (Governs when arbitration is international, how to begin arbitration, and which agreements to arbitrate); H.B. 827 (Revises some rules for bringing claims against practitioners); S.B. 112 (Prohibits fraud of real or personal property); H.B. 915 (House version of S.B. 112).

#### GEORGIA

**Bills Enacted:** None.

**Other Legislation:** H.B. 176 (Changes regional provisions about advanced broadband collocation); H.B. 465 (Adds new section about debt management services); H.B. 398 (Licenses personal care homes and community living arrangements); H.B. 438 (Increases maximum cost of alternative dispute resolution programs); H.B. 73 (Requires insurance to pay for some dietary food).

#### HAWAII

**Bills Enacted:** None.

**Other Legislation:** H.R. 1417 (Mandates dispute resolution in foreclosure actions); S.B. 336 (Establishes the Condominium Dispute Resolution Program for condominiums); H.R. 2348 (Requires real estate appraisers acting as arbitrators to provide information about arbitration proceedings to any person upon request); H.R. 418 (Adopts the Uniform Mediation Act); S.B. 1375 (Speeds the arbitration process in collective bargaining); H.R. 1173 (Allows for disputes over Health Benefit Trust fund to be handled through arbitration).

#### IDAHO

**Bills Enacted:** None.

**Other Legislation:** H.R. 260 (Establishes appointment of mediators in education disputes).

#### ILLINOIS

**Bills Enacted:** S.B. 1830 (Amends the Illinois Public Labor Relations Act, dealing with paying and firing arbitrators).

**Other Legislation:** H.R. 5923 (Creates the Office of the Condominium Ombudsman in the Office of the Attorney General); H.R. 5759 (Allows for mediation in residential foreclosure proceedings); S.B. 1622 (Creates the Office of the Education Ombudsman); H.R. 5931 (States that arbitration panels cannot consider

the ability to raise taxes when determining if a government can pay certain employees); S.B. 1636 (Amends the Code to make arbitrator decisions in insurance cases for hit and run and uninsured motorists binding); S.B. 2165 (Provides that when a hospital or doctor accepts a payment from an insurance company or health plan, it is not barred from subsequently initiating arbitration over the same matter); H.R. 5629 (Provides for mediation in parental disputes and assigns fees to a party if they are found to have unreasonably withheld consent to other parent decisions).

#### INDIANA

**Bills Enacted:** None.

**Other Legislation:** H.R. 1508 (Requires a court to refer civil action between political subdivisions to mediation); H.R. 1406 (Requires ombudsman office to post info on website and print materials dealing with child abuse and info on foster homes).

#### IOWA

**Bills Enacted:** None.

**Other Legislation:** H.R. 87 (Requires that certain intergovernmental agreements include a provision for mediation and arbitration); H.R. 2327 (Relates to notice of mortgage mediation assistance); S.B. 1032 (Requires that creditors provide notice of the availability of counseling and mediation services to homeowners facing foreclosure).

#### KENTUCKY

**Bills Enacted:** None.

**Other Legislation:** H.R. 276 (Creates office of taxpayer ombudsman); S. 147 (Establishes dispute resolution provisions for the IMPACT PLUS program); H.R. 88 (Expands the circumstances under which an arbitration agreement may be invalid or inapplicable).

#### LOUISIANA

**Bills Enacted:** S. 84 (MINERALS: Requests the Louisiana State Law Institute to study the feasibility and constitutionality of alternative dispute resolutions as a means of resolving "legacy" disputes).

**Other Legislation:** S. 194 (Provides for payment of attorney fees and costs in arbitration under certain circumstances); S. 310 (Provides for binding arbitration in certain circumstances for non-contracted providers of emergency medical services).

MAINE

None.

MARYLAND

**Bills Enacted:** None.

**Other Legislation:** H.R. 762 (Provides that certain communications within the course of mediation must remain confidential); H.R. 543 (Requiring the establishment of a pretrial victim-offender mediation program); S. 786 (Deals with foreclosure mediation); H.R. 1374 (Establishes a pre-file mediation process for foreclosures); H.R. 558 (Person can't enter into a contract with a public body if they have requirements to use arbitration for certain claims).

MASSACHUSETTS

**Bills Enacted:** None.

**Other Legislation:** H.R. 146 (An Act to establish an Independent Ombudsman office, external of the Department of Children and Families); S. 1614 (An Act to promote alternative dispute resolution for students); H.R. 50 (An Act to establish an Independent Ombudsman office, external of the Department of Children and Families); S. 492 (An Act to establish a foreclosure mediation program); H.R. 33 (An Act making uniform certain aspects of mediation); S. 1246 (An Act relative to interest arbitration for state employed health care professionals); S. 1260 (An Act relative to establishing binding arbitration for Bristol County correction officers); H.R. 589 (An Act providing for binding arbitration for firefighters and police officers); H.R. 1473 (An Act relative to arbitration for automobile insurance property damage); H.R. 2157 (An Act allowing for private arbitration for all parties involved in residential contracting); H.R. 32 (An Act revising the Uniform Arbitration Act for commercial disputes); H.R. 1534 (An Act providing for a long term care Ombudsman in Hospitals).

MICHIGAN

**Bills Enacted:** S. 903 (An act to provide for the enforceability of agreements to arbitrate disputes); H.R. 4552 (Provides for mediation and arbitration in worker's compensation cases).

**Other Legislation:** S. 95 (Provides for mediation and arbitration of labor disputes); H.R. 5780 (Provides for mediation of grievances by public employees); H.R. 6073 (A bill to create the office of the legislative education ombudsman); H.R. 5486 (A bill to create the office of the Michigan veteran's facility ombudsman).

## MINNESOTA

**Bills Enacted:** None.

**Other Legislation:** H.R. 765 (A bill creating an Office of Collaboration and Dispute Resolution in the Bureau of Mediation Services); S. 735 (Authorizing grants to private nonprofit entities that assist in dispute resolution; appropriating money); S. 2244 (Requires mediation to develop parenting plans); S. 1027 (Creates a pollution control ombudsman); H.R. 2694 (Specifies factors that must be considered in arbitration); S. 185 (Establishes a transportation ombudsman); S. 70 (Requires a mortgage company to pay for and participate in mediation of foreclosure proceeding upon borrower request); H.R. 2904 (Requires legislators and governors to mediate their differences when governor vetoes a major appropriations bill).

## MISSISSIPPI

**Bills Enacted:** None.

**Other Legislation:** H.R. 1275 (Provides for mediation between borrowers and lenders before a foreclosure action); H.R. 1272 (Makes certain arbitration clauses nonbinding); H.R. 960 (Makes eminent domain proceedings determined by binding arbitration).

## MISSOURI

**Bills Enacted:** None.

**Other Legislation:** S. 670 (Allows owner-occupants facing non-judicial foreclosure under a power of sale to elect to participate in dispute resolution or convert to judicial foreclosure); S. 418 (Allows for arbitration in certain disputes between land management companies and public utilities); S. 260 (Establishes a negotiation and arbitration procedure to determine the reimbursement level for health care services provided by nonparticipating providers at participating facilities); S. 444 (Repeals a provision of law that requires MoDOT to submit to binding arbitration in negligence actions); S. 434 (Allows for arbitration in school bus boundary disputes); S. 196 (Provides that trust provisions requiring mediation or arbitration of disputes concerning the trust are enforceable).

## MONTANA

**Bills Enacted:** H.R. 555 (Revise mediation laws related to family law and domestic violence); S. 280 (Mediation of valuation disputes—centrally assessed and industrial properties); H.R. 76 (Office of child and family ombudsman established); H.R. 469 (Arbitration of lien disputes); S. 235 (Provides that any dispute will be resolved through mediation); S. 28 (Provides for dispute resolution to resolve matters subject to the compact); H.R. 118 (Repeals Section 31-1-816, which

provided for right of rescission-arbitration); S. 175 (Cap of \$500,000 to mediate with vendors).

**Other Legislation:** S. 284 (Provided for arbitration, mediation, or other dispute resolution means if the parties so agreed).

#### NEBRASKA

**Bills Enacted:** L.B. 561 (Revises the Act to say that the case shall be referred to mediation or alternative specialized resolution under the Parenting Act).

**Other Legislation:** L.B. 339 (Act changes fence dispute provisions; to harmonize provisions; and to repeal the original sections. Parties may request mediators); L.B. 342 (Amends to say that cases should be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act); L.B. 307 (Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168); L.B. 541 (For an act relating to the Uniform Arbitration Act; to amend section 25-2602.01, Revised Statutes Cumulative Supplement, 2012; to prohibit arbitration of claims involving disciplinary actions against peace officers; and to repeal the original section); L.B. 485 (Attempts to eliminate unfair employment practices by means of mediation, conciliation, and arbitration); L.B. 639 (Certain parts are subject to arbitration); L.B. 638 (Retroactive salary payments are paid pursuant to court order or arbitration).

#### NEVADA

**Bills Enacted:** H.R. 370 (An act relating to real property; revising provisions governing the mediation and arbitration of certain claims involving certain residential property; and providing other matters properly relating thereto); H.R. 326 (An act relating to arbitration; requiring certain agreements that require arbitration of disputes arising under the agreement to include specific authorization for the arbitration; and providing other matters properly relating thereto); H.R. 405 (An act relating to governmental administration; requiring the Director of the Legislative Counsel Bureau to develop biennial recommendations for the elimination of the requirement to submit certain obsolete and redundant reports to the Legislature; repealing provisions which require the submission of a report to the Director and certain other persons; and providing other matters properly relating thereto. Some parts require mandatory mediation).

**Other Legislation:** H.R. 320 (An act relating to common-interest communities; requiring a unit owners association to submit, and the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to maintain, certain information concerning settlements and awards obtained by the association for a constructional defect claim; revising provisions governing the duties of the Ombudsman; and providing other matters properly relating thereto); S. 124

(An act relating to local government employment; providing that fact finders, hearing officers and arbitrators in certain employment-related matters must be attorneys in good standing admitted to practice law in the courts of this State; and providing other matters properly relating thereto); H.R. 34 (An act relating to common-interest communities; authorizing the executive board of an association to act without a meeting under certain circumstances; providing for the certification of voting monitors to administer and supervise votes of units owners; authorizing the appointment of a referee to render a decision in certain disputes involving common-interest communities; authorizing the Administrator of the Real Estate Division of the Department of Business and Industry to issue subpoenas under certain circumstances; revising various provisions governing common-interest communities; and providing other matters properly relating thereto).

#### NEW HAMPSHIRE

**Bills Enacted:** H.R. 178 (This bill requires the public employee labor relations board to: I. Post online training for collective bargaining. II. Maintain a record how political subdivisions vote on collective bargaining agreements and provide the legislature with an annual report. The Public Employee Labor Relations Board states this bill authorizes "binding arbitration" in the case of public employee labor relations disputes); H.R. 416 (this bill shortens the process for appealing a permitting decision under RSA 482-A, relative to fill and dredge in wetlands, by removing the requirement to request reconsideration. Appeals and disagreements are subject to mediation); H.R. 236 (This bill adds members to the New Hampshire council on autism spectrum disorders and clarifies its duties-no longer provides for mediation).

**Other Legislation:** H.R. 554 (This bill allows parents to agree on contributions to college or other post-secondary education expenses and authorizes the court to approve and enforce such agreements. Use mediation for agreeing on college expenses).

#### NEW JERSEY

**Bills Enacted:** None.

**Other Legislation:** S. 2645 (An Act establishing the Office of the Special Education Ombudsman and supplementing Title 18A of the New Jersey Statutes); H.R. 2555 (Assign an administrative law judge or other personnel to conduct arbitration, mediation, and other forms of alternative dispute resolution with regard to any contested case or any proceeding other than that related to a contested case or administrative adjudication); A.B. 3730 (Extends certain time limitations in police and fire contract arbitration proceedings); S. 789 (Provides that the court may order an approved dispute resolution program or other form of mediation); A.B. 3684 (This bill requires residential community release program (RCRP) facilities to install closed circuit security cameras in certain facilities and to provide inmates with direct telephone access to the Corrections Ombuds-person for the purpose of reporting conditions in the facility. In addition, upon



receipt of a report, the Corrections Ombudsperson is required to investigate and provide a written report with findings and recommended action); A.B. 3696 (The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act); A.B. 4153 (An Act requiring the certification of certain arbitrators, the development of standards for the arbitration of warranty claims and a training program for arbitrators, and the promulgation of a home buyer's bill of rights under the "New Home Warranty and Builders' Registration Act," and supplementing chapter 3B of Title 46 of the Revised Statutes); S. 2557 (An Act concerning foreclosure mediation, amending N.J.S.22A:2-12, supplementing Title 2A of the New Jersey Statutes, and dedicating monies from foreclosure filing fees and fines); A.R. 149 (An Assembly Resolution urging the Congress and President of the United States to pass legislation allowing New Jersey's new motor vehicle lemon law to supersede certain motor vehicle arbitration agreements); S. 2508 (An Act establishing the New Jersey All-Payer Claims Database and an arbitration process for managed care reimbursement of out-of-network health care providers and supplementing various parts of the statutory law).

#### NEW MEXICO

**Bills Enacted:** None.

**Other Legislation:** S. 66 (The Director must have alternate dispute resolution experience); S. 589 (Establishes procedures for alternative dispute resolution between the exchange and contractors or carriers); H.R. 281 (Engineers may refer matters to mediation or some other sort of alternate dispute resolution).

#### NEW YORK

**Bills Enacted:** None.

**Other Legislation:** S. 3152 (An act to amend the executive law, in relation to creating the office of the cooperative and condominium ombudsman; to amend the tax law, in relation to authorizing the residential unit fee; and to amend the state finance law, in relation to establishing the office of the cooperative and condominium ombudsman fund); S. 3037 (Amends to read that alternate dispute resolution is an option); S. 4717 (Provides a two-step procedure of mediation and, if necessary, arbitration for negotiating commercial lease renewals); A.B. 5262 (Outlines appointment of arbitrator and arbitration proceedings); A.B. 4789 (Outlines arbitration procedures and grounds for vacating awards); A.B. 604 (An act to amend the general business law, in relation to arbitration organizations-provides definitional framework); S. 3734 (Provides for a mediation process-the child centered mediation process, in suitable cases, is an appropriate way to help parents resolve child custody, parenting and child support disputes); A.B. 6113 (Certain mediation and arbitration information is required to be stored); A.B. 3922 (Discusses arbitration awards); A.B. 4179 (With respect to an action for serious personal

injury permissible under section five thousand one hundred four of this article, the award or decision of an arbitrator or master arbitrator rendered pursuant to subsection (c) of this section shall not constitute a collateral estoppel of the issues arbitrated); A.B. 4965 (No employer or employee shall retaliate in any manner against an employee who has opposed any unlawful employment practice under this article, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this article, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings and legal actions); A.B. 6174 (An act to repeal paragraph (d) of subdivision 4 of section 209 of the civil service law relating to the expiration of public arbitration of disputes between public employers and employee organizations); A.B. 6713 (An act to amend the civil service law, in relation to extending the expiration of public arbitration of disputes between public employers and employee organizations); A.B. 5018 (Any dispute arising between one or more municipalities in relation to water rates shall be subject to arbitration pursuant to article seventy-five of the civil practice law and rules); A.B. 5109 (AN ACT to amend the public authorities law, in relation to establishing an office of the ombudsperson for the purpose of receiving and resolving complaints affecting mass transit users of the facilities of the metropolitan transportation authority); A.B. 7060 (Complaints are subject to mediation); S. 3544 (AN ACT to amend the insurance law, in relation to requiring arbitration for no fault claims under the comprehensive motor vehicle reparations act); A.B. 7230 (Provides for peer supervised mediation of disputes); A.B. 2628 (An act to amend the executive law, in relation to prohibiting the state from entering into contracts with companies requiring employees to stipulate to binding arbitration for all disputes); A.B. 2678 (Provides for the arbitration of consumer claims).

#### NORTH CAROLINA

**Bills Enacted:** None.

**Other Legislation:** H.R. 482 (An act to amend the law regarding mediated settlement conferences in superior court, mediation in district court domestic cases, and the regulation of mediators, to establish a dispute resolution fund for monies collected through the existing administrative fee for the certification of mediators and mediation training programs, and to make it unlawful to falsely represent oneself as a certified mediator or to falsely represent a mediator training program as certified); S. 467 (An act to establish a foreclosure mediation program); H.R. 278 (An act encouraging parties to a dispute involving certain matters related to real estate under the jurisdiction of a homeowners association to initiate mediation to try to resolve the dispute prior to filing a civil action); H.R. 68 (An act to establish a foster care ombudsman pilot program in Gaston county); S. 452 (An act to increase the jurisdictional amounts in the general court of justice, to make arbitration mandatory in certain civil cases, and to provide guidance to the court for the assessment of court costs and attorneys' fees in small claims matters when an arbitrator's decision in favor of the appellee is affirmed on appeal).

NORTH DAKOTA

**Bills Enacted:** H.R. 1352 (AN ACT to create and enact a new section to chapter 38-11.1 and a new section to chapter 47-16 of the North Dakota Century Code, relating to mediation of mineral developer and surface owner disputes and resolution of title disputes); H.R. 1065 (Provides for the appointment of arbitrators for disputes between a township and a newly organized municipality); H.R. 1440 (Provides for the mediation of water service agreement disputes).

**Other Legislation:** H.R. 1407 (At the request of a landowner or the applicant for a certificate or permit for a gas or liquid transmission line or associated facilities, each party shall submit to mediation by the North Dakota mediation service).

OHIO

**Bills Enacted:** H.R. 51 (Provides a new provision that authorizes a binding dispute resolution method); S. 67 (Provides that binding arbitration is the procedure to be used).

**Other Legislation:** H.R. 159 (Health insurers must disclose availability of dispute resolution procedures); H.R. 119 (Employers may still use arbitration for dispute resolution).

OKLAHOMA

**Bills Enacted:** S. 1062 (Creating Worker's Comp. Arbitration Act; requiring ADR program; making mediation voluntary); S. 924 (Prohibits required arbitration; requires mediation); S. 629 (use of ombudsman; informal dispute resolution); S. 396 (C. A conciliation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief); S. 592 (permitting assisted living care facilities to participate in informal dispute resolution panels); S. 951 (Applies to arbitration; decision violating public policy is void and unenforceable); S. 587 (Execution of the waiver must be witnessed and signed by a representative of the state's long-term care ombudsman's office); S. 697 (Nothing herein prohibits arbitration under contract; arbitration conducted in accordance with reinsurance contract and AAA); H.R. 2201 (The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate physician within the network of the certified workplace medical plan by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health); S. 237 (Ombudsmen employed by Department of Human Services); H.R. 2062 (If the state agency for which information technology shared services were provided disputes the provision of shared services in accordance with its agreement with the Information Services Division, no voucher shall be processed against the funds of the delinquent agency until the dispute over shared services has been resolved, at which point a voucher may be processed in accordance with the terms of the dispute resolution); H.R. 1328 & H.R. 1743 (Volunteer mediators and employees of

a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes); S. 684 (13. Formulate, adopt, and promulgate rules, pursuant to Article I of the Administrative Procedures Act, as may be necessary to implement and enforce the provisions of the Oklahoma Dental Mediation Act).

**Other Legislation:** H.R. 1982 (Providing Dispute Resolution Process and specifying means of process); H.R. 1546 (Creating Workers' Comp. Commission & Providing Dispute Resolution Process); S. 378 (If charter school application is rejected, then applicant may use mediation or arbitration); S. 683, S. 229, S. 367, H.R. 573 (If charter school application is rejected, then applicant may use mediation or arbitration); H.R. 1752 (Specifying means of dispute resolution - intentional torts and other employer liability resolved through mediation, arbitration or other form of dispute resolution); H.R. 1362 (Providing for an ombudsman program within offices referenced); S. 1015 (Arbitrator, mediation authority shall not enforce foreign law if so doing would mitigate punishment); S. 144 (f. To serve as a dispute resolution panel for binding arbitration in accordance with Section 801 et seq. of Title 15 of the Oklahoma Statutes in contract controversies between licensed used motor vehicle dealers, dismantlers and manufactured housing dealers, manufactured home dealers, installers, and manufacturers and their consumers when, by mutual written agreement executed after the dispute between the parties has arisen, both parties have agreed to use the Commission as their arbitration panel for contract disputes.); H.R. 2190 (Permitting assisted living care facilities to participate in informal dispute resolution panels); H.R. 1114 & H.R. 1520 (Upon petition, court can order mediation; after mediation, court will enter order); S. 239 (When property, separate maintenance, or custody is at issue, the court 1. May refer the issue or issues to mediation if feasible, unless a party asserts, or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that...); S. 1026 (The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate physician within the network of the certified workplace medical plan by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health. (Provisions do not preclude employee who has exhausted dispute resolution process)); S. 991 (The uninsured motorist coverage shall be upon a form approved by the Insurance Commissioner as otherwise provided in the Insurance Code and may provide that the parties to the contract shall, upon demand of either, submit their differences to arbitration; provided, that if agreement by arbitration is not reached within three (3) months from date of demand, the insured may sue the tort-feasor); S. 1038, S.102, S.362, S. 618, & S. 1030 (Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes).

## OREGON

**Bills Enacted:** S. 22 (Requires department to promote dispute resolution procedures for individuals receiving developmental disability services); S. 568 (Requires Oregon Health Authority to adopt dispute resolution process to resolve

disputes involving termination, extension or renewal of contract between health care entity and coordinated care organization).

**Other Legislation:** H.R. 2217 (Requires health care facilities, health care providers and patients to engage in discussion and mediation related to adverse health care incidents. Requires court to stay civil action for negligence commenced before requirements completed. Makes provisions requiring discussion and mediation operative on July 1, 2014); S. 134 (SECTION 11. (1) A dispute about the 9-1-1 emergency reporting system between a regional 9-1-1 center and either a public or private safety agency or a unit of local government that was party to the intergovernmental agreement by which the regional 9-1-1 authority was created must be submitted to alternative dispute resolution as provided in this section if the dispute cannot be resolved in accordance with a written agreement); H.R. 3337 (The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy); H.R. 3120 (Abolishes Oregon Student Access Commission. Transfers policy and dispute resolution authority of Oregon Student Access Commission to Higher Education Coordinating Commission); H.R. 2448 (Requires issue subject to collective bargaining during term of collective bargaining agreement that is not resolved through negotiation or mediation to be resolved through binding arbitration. Prohibits public employees from striking when issue subject to collective bargaining during term of collective bargaining agreement is subject to binding arbitration); S. 592 ((23) Resolve a dispute concerning the interpretation of the trust or the administration of the trust by mediation, arbitration or other procedure for alternative dispute resolution); S. 206 (Provides that construction contractor afforded opportunity to have complaint regarding residential defect mediated by Construction Contractors Board is not entitled to additional notice and opportunity to correct defect prior to owner compelling arbitration or commencing court action); H.R. 3117 (Requires institution and student government to establish mediation and arbitration procedures if agreement on student fees is not reached. Becomes operative on January 1, 2014. Declares emergency, effective on passage); H.R. 2254 ((8) If the city and district are unable to develop the agreement within 180 days after the date of the first meeting, the city or the district may require mediation. If mediation is required, the city and the district shall each designate an individual to work with the city and the district to develop an agreement. The city and the district are each responsible for the costs of the mediator it selects. - provision for arbitration); S.R. 408 ((2) Prior to issuing a final order in a contested case under subsection (1) of this section, the Director of Transportation may provide the opportunity for the parties to participate in mediation consistent with the applicable provisions of ORS 36.185 to 36.210. In any alternative dispute resolution proceeding, the director may authorize administrative remedies, including monetary damages or other relief, as determined by the department by rule, to address issues related to real property value, utility or use); H.R. 3309 ((7) The authority shall adopt by rule a process for resolving disputes involving an entity's refusal to contract with a coordinated care organization under subsections (4) and (5) of this section. The pro-

cess must include the use of an independent third party arbitrator); S. 665 (Transfers State Interoperability Executive Council from Department of Transportation to Oregon Department of Administrative Services. - 4) Under the direction of the executive council, the statewide interoperability coordinator may mediate disputes between public bodies collaborating to implement interoperable public safety communications systems); H.R. 3256 (Allows parties to good neighbor agreement to file agreement with Oregon Liquor Control Commission. - d) In addition to any other remedy available, a neighborhood association or local government that is a party to the agreement may file a request with the commission for an order requiring the licensee to participate in mediation or binding arbitration to resolve disputes arising under the agreement); H.R. 3300 (Requires State Geologist within State Department of Geology and Mineral Industries to appoint Mineral Resources Ombudsman. Specifies duties of Mineral Resources Ombudsman. Declares emergency, effective on passage); H.R. 3187 (Allows arbitrator of labor dispute between public employer and public employees to make arbitration award containing elements from each of last best offers submitted by parties); S. 95 (Requires last best offer submitted in certain arbitration proceedings by exclusive representative of employees of public employer that requires increases in taxes or fees or reduction of services or workforce to meet costs of implementation of offer to be deemed not to be in best interest and welfare of public); S. 73 (Allows agricultural producer in danger of foreclosure on agricultural property to request mediation if producer owes more than \$50,000 to one or more creditors); H.R. 2400 (Removes exemption for certain beneficiaries from requirement to enter into mediation with grantor before initiating foreclosure of residential trust deed by advertisement and sale. Removes exemption for certain beneficiaries from requirement for beneficiary to pay \$100 fee to county clerk when recording notice of default. Requires beneficiary or beneficiary's agent to enter into mediation with grantor in good faith. Becomes operative 91 days after effective date of Act. Declares emergency, effective on passage); S. 374, S. 367, & H.R. 2935 (Requires person that brings suit to foreclose residential trust deed to enter into mediation with grantor before bringing suit. Provides exceptions. Requires person to serve on or mail to grantor notice of mediation at least 120 days before bringing suit to foreclose residential trust deed. Declares emergency, effective on passage); S. 804 (Requires grantor that seeks mediation with trustee before foreclosure proceedings to provide mediation service provider with certain documents. Makes beneficiary's duty to provide certain documents and to appear at mediation contingent on grantor's providing documents. Specifies when grantor is at risk of default and would be eligible to seek mediation with beneficiary); H.R. 3389 (Requires beneficiary under residential trust deed to request resolution conference with grantor for purposes of negotiating foreclosure avoidance measure, unless beneficiary is eligible to claim exemption from requirement. Specifies manner in which beneficiary must request resolution conference. Permits grantor to request resolution conference under certain circumstances. Specifies documents that beneficiary and grantor must provide and specifies procedure for and duties of beneficiary and grantor with respect to resolution conference. Requires beneficiary to obtain certificate of compliance after resolution conference in order to foreclose residential trust deed. Specifies conditions under which beneficiary may obtain certificate of compliance. Changes name of Foreclosure Avoidance Mediation Fund to Foreclosure Avoidance Fund and continuously appropriates moneys in fund to Attorney Gen-

eral for purposes of paying service provider to coordinate program to implement provisions of Act and paying related expenses. Requires beneficiary to send notice to grantor if beneficiary determines that grantor is not eligible for foreclosure avoidance measure or has not complied with terms of foreclosure avoidance measure. Becomes operative 91 days after effective date of Act. Declares emergency, effective on passage).

PENNSYLVANIA

**Bills Enacted:** H.R. 1052 (Amending the act of July 31, 1968 (P.L.805, No.247), "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," further providing for contents of subdivision and land development ordinance); H.R. 515 (Amending the act of July 31, 1968 (P.L.805, No.247), "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," further providing for definitions; and providing for mailed notice in certain proceedings).

**Other Legislation:** H.R. 1139 (Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," deleting and replacing provisions relating to collective bargaining between public school employees and their public employers; setting forth public policy relating to public school employee strikes; providing for assessments and for duties of the Bureau of Mediation and the Pennsylvania Labor Relations Board; and imposing penalties); H.R.

1255 (Amending the act of July 23, 1970 (P.L.563, No.195), entitled "An act establishing rights in public employees to organize and bargain collectively through selected representatives; defining public employees to include employees of non-profit organizations and institutions; providing compulsory mediation and fact-finding, for collective bargaining impasses; providing arbitration for certain public employees for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employee and employer practices; prohibiting strikes for certain public employees; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation," in representation, further providing for appropriateness of a unit; in collective bargaining impasse, further providing for impasse to a panel of arbitrators; and, in strikes, further providing for prohibition); H.R. 250 (Amending the act of July 23, 1970 (P.L.563, No.195), entitled "An act establishing rights in public employees to organize and bargain collectively through selected representatives; defining public employees to include employees of nonprofit organizations and institutions; providing compulsory mediation and fact-finding, for collective bargaining impasses; providing arbitration for certain public employees for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employee and employer practices; prohibiting strikes for certain public employees; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation," further defining "maintenance of membership"; and further providing for employee rights and for scope of bargaining); H.R. 23 (Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, extensively revising the Uniform Arbitration Act; and making editorial changes); S. 721, H.R. 47, H.R. 772, H.R. 479, H.R. 698, & H.R. 148 (Amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," in appeals to court, further providing for intervention).

#### RHODE ISLAND

None.



SOUTH CAROLINA

None.

SOUTH DAKOTA

None.

TENNESSEE

**Bills Enacted:** S. 749 (AN ACT to amend Tennessee Code Annotated, Title 33; Title 36 and Title 37, relative to custody determinations involving disabled parents); S. 502 (AN ACT to make appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2012, and July 1, 2013, in the administration, operation and maintenance of the legislative, executive and judicial branches of the various departments, institutions, offices and agencies of the state; for certain state aid and obligations; for capital outlay, for the service of the public debt, for emergency and contingency; to repeal certain appropriations and any acts inconsistent herewith; to provide provisional continuing appropriations; and to establish certain provisions, limitations and restrictions under which appropriations may be obligated and expended. This act makes appropriations for the purposes described above for the fiscal years beginning July 1, 2012, and July 1, 2013); S.B. 200 (Requires administrator of division to have "seven years," instead of "five years," of experience; requires settlements be approved by claims commissioner or "a workers' compensation specialist," instead of "the commissioner of labor and workforce development"; removes notice requirement for medical claims over \$5,000; and revises various deadlines).

**Other Legislation:** H.R. 52 & S. 79 (AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, relative to creating a higher education ombudsman); H.R. 693 (AN ACT to amend Tennessee Code Annotated, Title 33; Title 36 and Title 37, relative to custody determinations involving disabled parents); H.R. 507 (AN ACT to make appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2012, and July 1, 2013, in the administration, operation and maintenance of the legislative, executive and judicial branches of the various departments, institutions, offices and agencies of the state; for certain state aid and obligations; for capital outlay, for the service of the public debt, for emergency and contingency; to repeal certain appropriations and any acts inconsistent herewith; to provide provisional continuing appropriations; and to establish certain provisions, limitations and restrictions under which appropriations may be obligated and expended. This act makes appropriations for the purposes described above for the fiscal years beginning July 1, 2012, and July 1, 2013); H.R. 1297 & S. 42 (AN ACT to amend Tennessee Code Annotated, Title 4; Title 7; Title 8; Title 12; Title 43; Title 45; Title 49 and Title 65, relative to discrimination and preferences in government).

## TEXAS

**Bills Enacted:** S. 1237 (Relating to referral of disputes for alternative dispute resolution, including victim-directed referrals; authorizing a fee); S. 1662 (In 2005, the Texas Legislature enacted legislation which allows certain property owners to appeal an appraisal review board order through binding arbitration as an alternative to filing a lawsuit. In 2009, the Texas Legislature amended the Tax Code to allow property owners to choose between a full arbitration (\$500) and an expedited arbitration (\$250). In response to the expedited arbitration at a reduced rate, the available pool of qualified arbitrators has declined dramatically (71 percent), while the total number of arbitrations has increased (230 percent) since the enactment of the binding arbitration statute. In order to ensure that quality arbitrators are available for binding arbitration in the future, C.S.S.B. 1662 repeals the expedited arbitration option from the Tax Code. C.S.S.B. 1662 amends current law relating to expedited binding arbitration of appraisal review board orders); S. 1255 (Relating to binding arbitration of an appraisal review board order determining a protest of an unequal appraisal of the owner's property).

**Other Legislation:** H.R. 1408 (Relating to dispute resolution for certain claims arising under insurance policies issued by the Fair Access to Insurance Requirements (FAIR) Plan Association; authorizing fees); H.R. 33 (Relating to alternative methods of dispute resolution in certain disputes between the Department of Aging and Disability Services and an assisted living facility licensed by the department); S. 542 & H.R. 2057 (Relating to alternative dispute resolution methods regarding educational services for students with disabilities, including individualized education program facilitation); S. 747 (Relating to the term for the independent ombudsman for state supported living centers); S. 1784 (Relating to establishing the Texas Landowner Ombudsman office in the General Land Office); H.R. 2218 (Relating to the office of independent ombudsman for the Department of Family and Protective Services); S. 1717 & H.R. 1543 (Relating to the authority of the office of independent ombudsman with the Texas Juvenile Justice Department in regard to juveniles in custody in facilities other than juvenile justice facilities); H.R. 2925 (Relating to alternative dispute resolution of certain insurance payment disputes with chiropractors); H.R. 1512 (Relating to referral of disputes for alternative dispute resolution, including victim-directed referrals; authorizing a fee); S. 1202 & H.R. 3691 (Relating to an order to conduct mediation following an application for expedited judicial foreclosure proceedings); H.R. 3444 (Relating to eligibility to serve as an arbitrator in a binding arbitration of an appeal of an appraisal review board order); H.R. 167 (Relating to the establishment, operation, and funding of victim-offender mediation programs; authorizing a fee); H.R. 2956 (Relating to certain binding arbitration provisions in certain insurance and health benefit plan coverage documents); H.R. 3193 (Relating to certain appeals through binding arbitration of appraisal review board orders); H.R. 1329 (Relating to the administration of oaths and issuance of subpoenas in an arbitration proceeding involving county firefighters or police officers; creating an offense); H.R. 2544 (Relating to victim-offender mediation services offered by the victim services division of the Texas Department of Criminal Justice); H.R. 2192 (Relating to binding arbitration of an appraisal review board order determining a protest of an unequal appraisal of the owner's property); H.R.

2125 (Relating to dispute resolution for certain property insurance claims; authorizing a fee); S. 1680 (Relating to certain requirements applicable to contracts entered into by state agencies); H.R. 3953 (Relating to authorizing certain special districts in Montgomery County to enter into strategic partnership agreements); H.R. 1898 (Relating to requiring certain residential property insurers to adjust certain claims under Texas Windstorm Insurance Association policies; imposing fees); H.R. 3511 (Relating to the adjudication of certain claims under a written contract with a special-purpose district or authority or local governmental entity).

## UTAH

**Bills Enacted:** H.R. 135 (This bill amends medical malpractice action or arbitration proceedings); S. 155 (This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78B, Chapter 6, Particular Proceedings, by permitting post-adoption contact agreements between prospective adoptive parents and birth parents or other birth relatives of a prospective adoptive child in the custody of the Division of Child and Family Services).

**Other Legislation:** S. 109 (This bill modifies provisions of Title 13, Chapter 43, Property Rights Ombudsman Act, and requirements of the change application process under Title 73, Water and Irrigation); H.R. 381 (This bill creates a provision for using arbitration in personal injury from a dog attack).

## VERMONT

**Bills Enacted:** H.R. 432 (An act relating to mediation in foreclosure actions); S. 14 (This bill proposes to require payment of agency fees by teachers, school administrators, and municipal employees who are not members of a labor organization recognized as the exclusive bargaining agent. In addition, it would confirm explicitly that agency fees cannot be used for any purpose other than in connection with collective bargaining).

**Other Legislation:** S. 52 (This bill proposes to extend collective bargaining rights to child care providers to improve the quality of early education in Vermont); S. 165 (This bill proposes to allow collective bargaining benefits for deputy state's attorneys); H.R. 201 & S. 114 (This bill proposes to clarify the statutory duties of the Office of the Mental Health Care Ombudsman); H.R. 7 (This bill proposes to give unit owners of common interest communities the ability to demand arbitration to challenge provisions, application, or enforcement of bylaws or rules of a governing association); H.R. 318 (This bill proposes to prohibit teachers and school administrators from striking and school boards from imposing contracts and to require mandatory binding arbitration); H.R. 314 (This bill proposes to authorize the State to establish standards regarding terms and conditions of employment for independent direct support providers in order to ensure the quality and availability of self-directed home care services through Vermont's home- and community-based programs. It also establishes the Direct Support Provider Workforce Council to advise the State regarding the recruitment and retention of

such providers, and it allows independent direct support providers to bargain collectively with the State).

#### VIRGINIA

**Bills Enacted:** S. 1028 & H.R. 1795 (Confidentiality of child support guidelines worksheets in mediated agreements. Eliminates two provisions requiring the disclosure of financial information obtained for the purposes of completing a child support guidelines worksheet in the course of mediation to the court even when the parties have not reached an agreement. Under current law, these provisions conflict with a mediator's duty of confidentiality. This bill is a recommendation of the Committee on District Courts. This bill is identical to HB 1795).

**Other Legislation:** H.R. 1997 (Labor organizations; privileged communications and information. Prohibits a labor organization or its agent from being compelled to disclose under specified circumstances a communication or information received or acquired in confidence while acting in a representative capacity concerning an employee grievance. The privilege applies to the extent that (i) a communication or information is germane to a grievance of the employee and (ii) the grievance is a subject matter of an investigation, a grievance proceeding, or other proceeding. The privilege does not protect the employee from being compelled to disclose facts underlying the communication or information. A labor organization or its agent is required to disclose a privileged communication or information to the employer if disclosure is necessary to prevent certain death or substantial bodily harm. The privilege does not apply in criminal proceedings).

#### WASHINGTON

**Bills Enacted:** H.R. 1822 (AN ACT Relating to debt collection practices; amending RCW 19.16.100, 19.16.250, 19.16.260, 19.16.270, 19.16.450, 4.16.040, 4.16.270, 4.56.110, and 4.84.330; adding new sections to chapter 19.16 RCW; and prescribing penalties); H.R. 1065 (AN ACT Relating to the applicability of statutes of limitation in arbitration proceedings; and amending RCW 7.04A.090).

**Other Legislation:** H.R. 1490 & S. 5387 (AN ACT Relating to the public employees' collective bargaining act as applied to department of corrections employees; reenacting and amending RCW 41.80.020; and adding new sections to chapter 41.56 RCW); H.R. 1069 (AN ACT Relating to the fair debt buyers practices act; amending RCW 19.16.100, 19.16.250, 19.16.260, 19.16.270, 19.16.450, 4.16.040, 4.16.270, 4.56.110, and 4.84.330; adding new sections to chapter 19.16 RCW; and prescribing penalties); S. 5177 (AN ACT Relating to creating an office of corrections ombuds; and adding a new chapter to Title 43 RCW); S. 5733 (AN ACT Relating to interest arbitration panels; and amending RCW 41.56.465); S. 5840 (AN ACT Relating to foreclosure; amending RCW 61.24.010, 61.24.030, 61.24.110, and 61.24.130; adding a new chapter to Title 18 RCW; and prescribing penalties); S. 5395 & H.R. 1025 (AN ACT Relating to extending the application of prevailing wage requirements; amending RCW 39.12.010, 39.12.030, 39.12.040, 39.12.042, 39.12.050, 39.12.065, 39.12.070, 82.60.025, 82.75.010,

82.82.010, 82.08.820, 82.08.900, 82.08.955, and 82.12.955; reenacting and amending RCW 82.63.010; and adding a new section to chapter 39.12 RCW).

WEST VIRGINIA

None.

WISCONSIN

**Bills Enacted:** None

**Other Legislation:** S. 18 (Recodification of the child abuse and neglect reporting law; making probation agents, parole agents, and certain employees, contractors, and volunteers of schools and institutions of higher education mandated reporters of child abuse and neglect; requiring training for certain mandated reporters of child abuse and neglect; definitions of physical injury and neglect for purposes of mandated reporting of child abuse and neglect; requiring child protective service agencies to notify tribal agents of reports of suspected child abuse or neglect; and granting rule-making authority); S. 129 & H.B. 120 (Inadmissibility of a statement of apology or condolence by a health care provider); H.R. 133 & S. 148 (the applicability of the one-family and two-family dwelling code to certain structures used for camping and the exclusion of certain recreational vehicles and portable toilet systems from the definition of plumbing); S. 12 (the Badger Health Benefit Authority, health benefit exchange operation, granting rule-making authority, and providing a penalty).

WYOMING

**Bills Enacted:** H.R. 82 (AN ACT relating to health insurance; authorizing Wyoming insurers to offer individual and small employer health insurance policies in Wyoming that have been approved for issuance in other states; providing minimum standards for out-of-state policies; prescribing notice requirements; granting rulemaking authority; preempting conflicting laws; providing definitions; re-appropriating funds; appropriating additional funds; and providing for an effective date); S. 104 (AN ACT relating to government administration; establishing the position of director of the department of education by statute; providing duties of the director of the department of education; transferring duties from the state superintendent to the director of the state department of education; requiring reporting; providing for transition; providing an appropriation; authorizing position; and providing for an effective date); H.R. 12 (AN ACT relating to contagious and infectious diseases among livestock; revising provisions related to contagious and infectious diseases among livestock and other animals as specified; increasing certain penalties related to diseases among livestock and other animals as specified; repealing obsolete provisions; and providing for an effective date).

**Other Legislation:** H.R. 125 & S. 172 (AN ACT relating to health insurance; authorizing Wyoming insurers to offer individual and small employer health insurance policies in Wyoming that have been approved for issuance in other states;

prescribing notice requirements; granting rulemaking authority; preempting conflicting laws; providing definitions; and providing for an effective date).

