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State Legislative Update

Melissa Blair

Michael Benton

Jessica Gunder

David LeFevre

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State Legislative Update*

*Melissa Blair
Michael Benton
Jessica Gunder
David LeFevre
Elizabeth Wilhelmi*

I. STATE LEGISLATIVE FOCUS

A. The “Right to Cure” Movement in Construction Dispute Resolution: Georgia Senate Bill 573¹, Pennsylvania House Bill 1467², South Dakota House Bill 1152³

- Bill Numbers:** Georgia Senate Bill 573 (companion, House Bill 1243), Pennsylvania House Bill 1467, South Dakota House Bill 1152
- Summary:** These bills would establish “right to cure” procedures that construction defect claimants must follow before pursuing litigation. Such measures are designed to promote negotiation and/or mediation of construction disputes..
- Status:** Georgia (signed by Governor on April 28, 2006), Pennsylvania (vetoed by Governor on March 17, 2006), South Dakota (died in House Committee on Judiciary on February 8, 2006)

1. Introduction

With numerous contractors, subcontractors, and suppliers all working on a given construction project, sometimes simultaneously, there are innumerable sources of potential disputes, any of which could manifest as construction defect claims. For better or worse, states have witnessed a drastic increase in the amount of construction defect litigation, especially in the area of residential construction litigation.⁴ Feeling pressure from the construction and insurance industries, state legislatures over the years have responded in different ways.

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

1. S.B. 573, 148th Gen. Assem., 2005-06 Reg. Sess. (Ga. 2006).

2. H.B. 1467, 189th Gen Assem., 2005-06 Reg. Sess. (Pa. 2006).

3. H.B. 1152, 81st Leg. Assem., 2006 Reg. Sess. (S.D. 2006), Bill History, available at <http://legis.state.sd.us/sessions/2006/1152.htm> (last visited Dec. 17, 2006).

4. Matthew T. Boyer, *Modern Legislation Creates Ambiguities in Determining Deadlines for Asserting Residential Construction Defect Claims*, 26 CONSTR. LAW 28, 28 (2006).

During the 1990s, many states enacted legislation establishing pre-suit requirements for plaintiffs, but many such statutes contained ambiguities and loopholes that whittled down their effectiveness.⁵ Another attempt to bring tort reform to the construction industry was the statute of repose, which worked in conjunction with the statute of limitation to limit the time period within which to detect a defect and file suit.⁶ Statutes of repose were fraught with drafting problems as they imposed overlapping and inconsistent requirements on claimants.⁷

The most recent trend in construction dispute resolution is the “right to cure” movement.⁸ Generally speaking, these statutes require a “cooling off” period in which the project owner (usually a homeowner, developer, or association) is barred from bringing suit—an attempt to force the owner to negotiate or enlist the services of a mediator before racing to the courthouse steps.⁹ Across the states that have enacted right to cure legislation, the applicability, precise requirements of notice, and consequences of failure to conform vary widely.¹⁰ Typically, right to cure statutes apply only to construction defect claims for residences or dwellings, although there are a few notable exceptions.¹¹ Before filing suit, an owner must send to the contractor written notice of the owner’s claim.¹² Under most state schemes, the contractor is then entitled to a certain amount of evidence of the claimed defect, an opportunity to inspect the property, and a chance to make an offer of settlement (be it repair or money damages).¹³ Only after all the necessary hoops have been jumped through, can the owner prosecute his or her lawsuit.¹⁴

As of December 1, 2006, twenty-eight states have enacted some type of right to cure legislation.¹⁵ On April 28, 2006, Georgia, one of the twenty-eight, amended its construction defect dispute resolution procedures to clarify the re-

5. See Darin T. Allen, *Construction Defects Litigation and the “Right to Cure” Revolution*, CONSTR. BRIEFINGS, March 2006, at 3 (discussing a Nevada law as one such troubled statute).

6. Boyer, *supra* note 4, at 28-29.

7. *Id.* Boyer posits that at least some of the problems with statutes of repose were caused by the legislatures’ failure to consider the impact of existing provisions on such statutes. *Id.*

8. Right to cure statutes are also referred to as “notice and opportunity to repair” legislation, or “right to repair” statutes.

9. Roger Jellenik, *The New Construction Disputes Law: Cooling Off or Chilling Out?*, 15-Mar S.C. LAW. 15, 15-17 (2004) (discussing the South Carolina legislature’s enactment of right to cure).

10. See Allen, *supra* note 5, at 3-5.

11. *Id.* at 4. One such exception is South Dakota’s recent legislation, discussed *infra*.

12. *Id.* at 4-5.

13. *Id.* at 5.

14. Boyer, *supra* note 4, at 31.

15. Michele Derus, *Home Remedy for Disputes; Bill Would Require Contractor Negotiations*, Milwaukee Journal Sentinel, March 2, 2006, at D1; see, e.g., ALASKA STAT. §§ 09.45.881-09.45.899 (2006); ARIZ. REV. STAT. ANN. § 12-1361 (LexisNexis 2006); CAL. CIV. CODE § 895 (West 2006); COLO. REV. STAT. ANN. § 13-20-801 (West 2006); FLA. STAT. ANN. § 558.001 (West 2006); GA. CODE ANN. §§ 8-2-35 to 43 (West 2006); HAW. REV. STAT. ANN. § 672E-1 (LexisNexis 2006); IDAHO CODE ANN. § 6-2501 (2006); IND. CODE ANN. § 32-27-3-1 (West 2006); KAN. STAT. ANN. § 60-4701 (2006); KY. REV. STAT. ANN. § 411.250 (West 2006); MISS. CODE ANN. § 83-58-7 (West 2006); MO. ANN. STAT. § 431.300 (West 2006); MONT. CODE ANN. § 70-19-427 (2006); NEV. REV. STAT. ANN. § 40.600 (West 2006); N.H. REV. STAT. ANN. § 359-G:1 (LexisNexis 2006); N.D. CENT. CODE § 43-07-26 (2006); OHIO REV. CODE ANN. § 1312.01 (West 2006); OR. REV. STAT. ANN. § 701.560 (West 2006); S.C. CODE ANN. § 40-59-810 (2006); TENN. CODE ANN. § 66-36-101 (West 2006); TEX. PROP. CODE ANN. §§ 401.001, 426.001-426.008 (Vernon 2006); WASH. REV. CODE ANN. § 64.50.005 (West 2006); W. VA. CODE ANN. § 21-11A-1 (West 2006); WISC. STAT. ANN. §§ 101.148, 895.07 (West 2006).

sponsibilities of the parties.¹⁶ Pennsylvania attempted to become the twenty-ninth, the bill having passed both houses of the legislature, but the Governor vetoed the bill on March 17.¹⁷ Right to cure legislation was considered in South Dakota, but it was deferred to the 36th Legislative Day on February 8, 2006.¹⁸

2. Georgia's Amendments

Some scholars and practitioners view right to cure as the tort reform of the construction industry, and it has been hotly contested as such.¹⁹ Consumer advocates and homeowners associations claim that right to cure legislation created barriers against claims filed by owners, while leaving contractors free to sue owners who had retained payment (perhaps because of a defect).²⁰ Furthermore, they argue, the many steps involved in notice, inspection, offer, rejection, etc. will have a chilling effect, deterring legitimate claims.²¹

Indeed, a plain reading of the Georgia statute prior to its amendment reveals a very one-sided procedure. Contractors had no affirmative duty to perform inspections within a reasonable time period.²² The statute expressly stated that the owner could sue if provided a statement by the contractor to the effect that he would not remedy the defect, but it was silent about what would happen if the contractor *failed to respond altogether*.²³ Conceivably, then, the owner could serve notice on the contractor, as the owner was supposed to, and the contractor could sit on that notice indefinitely, all the while enforcing a statutory stay of any litigation.

The amendments passed in April made express what was likely intended, if not implied. The Georgia legislature added another condition that, if satisfied, will give the owner a right to sue: failure to receive an offer from the contractor. Upon delivery of the owner's notice of defect, the contractor now has an affirmative duty to inspect within thirty days.²⁴ Within fourteen days after the expiration of the thirty-day inspection period, the contractor must serve the owner with an offer, or else the owner can proceed with a lawsuit.²⁵

Another important amendment relates to condominium or homeowners associations. As an individual homeowner, a lawsuit can be cost prohibitive, so before the enactment of right to cure, homeowners would join together bringing suit as a condominium association, planned unit development, or common interest community.²⁶ These massive lawsuits were successful in forcing settlements, which

16. S.B. 573, 148th Gen. Assem., 2005-06 Reg. Sess. (Ga. 2006) (companion to H.B. 1243).

17. *Pennsylvania Governor Rendell Vetoes Residential Construction Dispute Resolution Act After State's AG Says It's Unconstitutional; Says Disputes Would Demand Expensive Legal Assistance*, PR NEWswire US, Mar. 17, 2006 [hereinafter PR NEWswire US].

18. H.B. 1152, 81st Leg. Assem., 2006 Reg. Sess. (S.D. 2006), Bill History, available at <http://legis.state.sd.us/sessions/2006/1152.htm> (last visited Dec. 17, 2006). Apparently, being "deferred to the 36th Legislative Day" is a euphemism for a bill being killed.

19. Allen, *supra* note 5, at 8.

20. *Id.*

21. *Id.* at 7-8.

22. GA. CODE ANN. § 8-2-38(e) (2004) (amended 2006).

23. *Id.* § 8-2-38(h).

24. GA. CODE ANN. § 8-2-38(e) (West 2006).

25. *Id.* § 8-2-38(h).

26. Allen, *supra* note 5, at 3.

contributed to the construction industry's seeking a legislative remedy.²⁷ The effect in Georgia was a right to cure statute that required 100% concurrence and participation of all condominium or homeowners association members before any claim could even be asserted (let alone, sued upon).²⁸ This was a substantial burden for officers and directors of such associations, so the statute was amended to only require a two-thirds vote, instead of a unanimous one.²⁹

While likely not quite the changes that opponents of right to cure wanted to see, the amendments passed by the Georgia legislature appear to have made it slightly more even-handed. If anything, the amendments in Georgia demonstrate that, if not drafted carefully, right to cure statutes could unintentionally create hurdles to filing suit so high as to block construction defect claimants from the courthouse altogether. Indeed, this was one such reason for Pennsylvania's rejection of right to cure.

3. Pennsylvania's Rejection

Pennsylvania House Bill 1467 represented typical right to cure legislation. Under Section 2 of the bill, it applied to residential construction.³⁰ Section 3 required a homeowner to serve upon the contractor written notice of a construction defect claim seventy-five days before filing suit, providing to the contractor any evidence the homeowner has regarding the defect.³¹ Section 5 proscribed the procedures after notice: a period of time in which the contractor may inspect, a period of time in which to make an offer, and a requirement that the owner and contractor meet face-to-face for settlement negotiations or mediation.³² The only thing different about H.B. 1467 is that it was vetoed.

In the message that accompanied Governor Edward Rendell's veto, he cited many of the concerns levied by the homeowners association lobby. Governor Rendell maintained that such a one-sided remedy as right to cure was a disproportionate response to growing construction industry insurance costs.³³ Just as the Georgia scheme prior to amendment had few meaningful sanctions for a contractor's failure to comply, so too did this bill. A homeowner's failure to respond in the proscribed manner meant loss of legal rights or reduction of damages, whereas a contractor's failure to respond or to perform remedial work simply meant the parties trod back into court.³⁴

Governor Rendell also vetoed the bill because he had concerns about its constitutionality under the Pennsylvania state constitution.³⁵ Article III contains a provision that provides, "in no other cases shall the General Assembly limit the

27. *Id.*

28. GA. CODE ANN. § 8-2-38(e)-(h) (2004) (amended 2006).

29. GA. CODE ANN. § 8-2-38(e)-(f) (West 2006).

30. H.B. 1467, 189th Gen Assem., 2005-06 Reg. Sess. (Pa. 2006).

31. *Id.*

32. *Id.*

33. PR NEWSWIRE US, *supra* note 17 (letter of Governor Rendell to Pa. H.R.).

34. See H.B. 1467, 189th Gen Assem., 2005-06 Reg. Sess. (Pa. 2006); Memorandum from the Pa. Legislative Action Comm. of the Cmty. Ass'ns Inst. to the Pa. House Urban Affairs Comm. 1-2 (Jun. 9, 2005) (on file with author).

35. PR NEWSWIRE US, *supra* note 17 (letter from Governor Edward Rendell to Pa. House of Rep.).

amount to be recovered for . . . injuries to . . . property”³⁶ Under Section 5(h) of the bill, a homeowner could only recover the full amount of damages entitled to a claimant under state law if the contractor failed to make an offer, or if the claimant rejected an offer that a judge or jury later determines to be unreasonable.³⁷ The state’s Attorney General, Tom Corbett, opined that such a restriction, even if conditional, is unconstitutional. Governor Rendell acted in accordance with his Attorney General’s advice.

Pennsylvania’s rejection of right to cure is significant. Construction defect litigation has grown exponentially over the last several decades.³⁸ Legislative responses to this increase seem to have occurred in waves, each wave being characterized by problems with poor drafting or unforeseen consequences due to interaction with existing statutes.³⁹ In addition to the aforementioned problems with this bill, Governor Rendell noted that many of the procedural protections afforded to contractors by statutory right to cure requirements can be accomplished by private contract through mediation and arbitration clauses.⁴⁰ Pennsylvania, he thought, might better be served by a different legislative response: contractor/homebuilder registration, coupled with public reporting requirements.⁴¹

Right to cure, like tort reform, is a politically charged topic, so it is certainly possible that Governor Rendell’s veto was a function of partisan politics. However, it is also possible that his veto is a sign that right to cure, in the form as considered in Pennsylvania, may be a hurried and unprincipled response to rising residential construction costs. Poorly drafted legislation, instead of promoting communication and remediation of the problem as right to cure is designed to do, could have the effect of creating barriers to litigation simply for barriers’ sake—that is, a failure of the essential purposes of such legislation.

4. South Dakota’s Proposed One-Size-Fits-All

The response by some South Dakota legislators this session to rising construction costs like insurance is extraordinarily broad in scope and sweeping in effect. South Dakota House Bill 1152 establishes right to cure procedures similar to those in other states, but makes them applicable to any claim for damages by any entity or person made against a construction professional for any construction defect.⁴² As was noted in House Judiciary Committee testimony, the procedure would apply to a \$1,100 deck remodeling, as well as an \$11 million hospital construction.⁴³

Under the bill, notice of a construction defect claim must be served at least 120 days before filing a lawsuit.⁴⁴ Any inspection must be completed within

36. PA. CONST. art. III, § 18.

37. PR NEWSWIRE US, *supra* note 17 (letter from Tom Corbett, Pa. Attorney General, to Governor Edward Rendell).

38. Allen, *supra* note 5, at 2-3.

39. *See id.* at 3; Boyer, *supra* note 4, at 29-32.

40. *Id.*

41. PR NEWSWIRE US, *supra* note 17 (letter from Governor Edward Rendell to Pa. House of Rep.).

42. *See* H.B. 1152, 81st Leg. Assem., 2006 Reg. Sess. (S.D. 2006).

43. Audio recording: committee hearing for S.D. House Committee on Judiciary (Feb. 8, 2006), available at <http://legis.state.sd.us/sessions/2006/1152.htm>.

44. H.B. 1152, 81st Leg. Assem., 2006 Reg. Sess. (S.D. 2006).

thirty days of service of notice; the contractor then has forty-five days to make an offer, if he makes one.⁴⁵ The claimant has 15 days from receipt of the offer to accept or reject it, followed by another round of offer and acceptance/rejection if the claimant rejects the initial offer.⁴⁶ The claimant can proceed to court (after a rather lengthy period) if no offer is made or if the claimant rejects the offer.⁴⁷ If the parties contractually agreed to a mediation procedure, then it must be honored first.⁴⁸

The South Dakota bill makes a number of notable concessions to claimants. Whereas the punishment under other states' right to cure laws for a contractor's failure to perform according to the terms of the settlement or remediation agreement is the right of the claimant to go back to court, H.B. 1152 will award attorney's fees.⁴⁹ Further, the claimant is not imposed any duty of reasonableness in accepting or rejecting an offer.⁵⁰

While concessions there may have been, H.B. 1152 still attempts to establish a very rigid set of pre-suit procedures that begin at least four months prior to the filing of a lawsuit. Moreover, this same set of procedures applies to every conceivable construction defect claim, be it a residential addition or a multi-million dollar commercial complex. The penalties for failure to conform are potent, so to ensure compliance, opponents noted, attorneys might need to be involved at very early stages in the dispute.⁵¹

In the end, the South Dakota House Judiciary Committee opted to kill the bill.⁵² In making his motion to defer the bill to the 36th Legislative Day, Representative Hennies made the comment that the bill was not the product of reasoned debate.⁵³ Rather, the five pages of amendments that had been considered between the bill's introduction on January 19 and the committee hearing on February 8 indicated that more work was needed *prior* to the introduction of legislation.⁵⁴

5. Conclusion

The exponential growth of construction defect litigation has led to higher insurance costs for contractors, forcing construction professionals to decide between passing on the higher costs to project owners, or not carrying insurance at all—neither of which is generally good for consumers. Statutes of repose, damages limitations, and other early efforts to control construction litigation have been

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* Note that if a claimant fails to give any response, he or she is deemed to have accepted the offer anyway. *Id.*

50. *See id.*; cf. H.B. 1467, 189th Gen Assem., 2005-06 Reg. Sess. (Pa. 2006).

51. Audio recording: committee hearing for S.D. House Committee on Judiciary (Feb. 8, 2006), available at <http://legis.state.sd.us/sessions/2006/1152.htm>.

52. H.B. 1152, 81st Leg. Assem., 2006 Reg. Sess. (S.D. 2006), Bill History, available at <http://legis.state.sd.us/sessions/2006/1152.htm> (last visited Dec. 17, 2006).

53. *See* Audio recording: committee hearing for S.D. House Committee on Judiciary (Feb. 8, 2006), available at <http://legis.state.sd.us/sessions/2006/1152.htm>. Deferring to the 36th Legislative Day is, apparently, a euphemism in South Dakota for killing a bill in committee.

54. *See id.*

fraught with problems, and it appears that the current trend in reform may be similarly plagued.

The amendments in Georgia demonstrate that the first enactment of right to cure in that state was done without full consideration of the statute's provisions. Governor Rendell's veto in Pennsylvania may indicate that the scheme as proposed by the building associations lobby may be too large a barrier to cross or too small a hoop to jump through for legitimate claimants. The death of H.B. 1152 in the South Dakota House Judiciary Committee is further evidence that rushed attempts to aid the construction industry are, perhaps, ill-advised.

Several states, such as California, have had right to cure statutes for a number of years.⁵⁵ While some believe that it is too early to evaluate these procedures,⁵⁶ time will tell which measures best accomplish the fundamental goal of right to cure statutes: fostering communication and resolution of disputes without resort to courts.

B. Public Disclosure of Medical Malpractice Settlements: Mississippi House Bill 276⁵⁷

Bill Numbers:	Mississippi House Bill 276
Summary:	This bill would have required insurers to report medical malpractice claims and physicians to report settlements and arbitration awards. This information would then have been made available to the public.
Status:	Died in committee on January 31, 2006

1. Introduction

The idea that medical malpractice settlements should be reported to the government is nothing new.⁵⁸ The Health Care Quality Improvement Act of 1986 created a federal database of malpractice settlements.⁵⁹ However, the information reported to this database can only be disclosed to that physician or for the purpose of "professional review" and is not available to the public unless state law provides otherwise.⁶⁰ In recent years, a number of state laws have been passed that require this information to be made available to the public. Similar legislation has recently been passed in California,⁶¹ Florida,⁶² Idaho,⁶³ Massachusetts,⁶⁴ New Jersey,⁶⁵ and Rhode Island.⁶⁶

55. Allen, *supra* note 5, at 5-6.

56. *Id.*

57. H.B. 276, 2006 Leg. Reg. Sess. (Miss. 2006).

58. 42 U.S.C. §§ 11101-11152 (2000).

59. *Id.*

60. *Id.*

61. CAL. BUS. & PROF. CODE § 803.1 (West 2003). This statute was amended in 2005 to require the disclosure of felony convictions. See A.B. 1438, 2005 Leg. Reg. Sess. (Cal. 2005).

62. FLA. STAT. § 456.041 (2001).

63. IDAHO CODE ANN. § 54-4603 (2003).

64. MASS. GEN. LAWS ch.112, § 5 (2004).

65. N.J. STAT. ANN. § 45:9-22.22 (West 2004).

66. R.I. GEN. LAWS § 5-37-9.2 (2004).

Mississippi House Bill 276 was introduced by State Representative Moak on January 5, 2006 and was sent to the House Committee on Public Health and Human Services and the House Committee on Judiciary A.⁶⁷ On January 31, 2006, the bill died in committee.⁶⁸

The stated goal behind the Mississippi legislation was to enable consumers “to make informed and educated choices regarding health care services.”⁶⁹ Some argue that disclosure is necessary because allowing the healthcare industry to keep settlements confidential creates a public hazard.⁷⁰ This argument is potentially flawed as “settlement may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the physician.”⁷¹ As a result, these laws have attempted to balance these incentives, encouraging the release of settlement details against the evidence that medical malpractice settlements are not reliable indicators of physician quality. This article discusses this balance that the states have found in the statutes they have proposed and enacted.

2. Discussion

Every state that has passed legislation mandating the disclosure of malpractice settlements has found a way to provide disclosure while alerting consumers to the risk in relying upon these settlements as an indication of physician quality. Every state which has passed legislation has utilized some combination of either categorizing the settlement, establishing threshold requirements, or issuing disclaimers.

a. Categorizing the Settlement

Three different methods of categorizing the malpractice settlement have been utilized by the states that have passed legislation to make malpractice settlements public. Some states have created categories based on physician specialties or the actual settlement amount, while others are concerned with the categorization of the number of settlements or judgments. For example, Massachusetts and Rhode Island do not release the actual settlement amount.⁷² Massachusetts classifies physician settlement amounts from the last ten years as either below average, average, or above average.⁷³ In both Massachusetts and Rhode Island, settlement statistics in these states are put into context with a comparison to the malpractice settlements of physicians in the same specialty.⁷⁴

67. H.B. 276, Status, available at <http://billstatus.ls.state.ms.us/2006/html/history/HB/HB0276.htm> (last visited Oct. 22, 2006).

68. *Id.*

69. H.B. 276, 2006 Leg. Reg. Sess. (Miss. 2006).

70. Alison Lothes, *Quality, Not Quantity: An Analysis of Confidential Settlements and Litigant's Economic Incentives*, 154 U. PA. L. REV. 433, 463 (2005).

71. *Id.*

72. MASS. GEN. LAWS ch.112, § 5 (2004); R.I. GEN. LAWS § 5-37-9.2 (2004).

73. See Massachusetts Board of Registration in Medicine: On-Line Physician Profile Site, <http://profiles.massmedboard.org/MA-Physician-Profile-Find-Doctor.asp> (last visited Oct. 22, 2006).

74. MASS. GEN. LAWS ch.112, § 5 (2004); R.I. GEN. LAWS § 5-37-9.2 (2004).

In New Jersey, the exact amount of malpractice awards, settlements, and judgments for the last five years is published.⁷⁵ However, the settlement information is further identified by categorizing the number of awards against a physician as either below average, average, or above average.⁷⁶ The physician's awards are placed in a category determined by comparing their judgments against those of physicians in the same specialty.⁷⁷

California categorizes physician specialties as either high-risk or low-risk.⁷⁸ Whether settlement or judgment information is released depends on the threshold limit that is imposed upon physicians in either category.⁷⁹ Even if the specific threshold is met, the exact settlement amount is not made public.⁸⁰ In a method similar to that of Massachusetts and Rhode Island, the settlement is instead described as below average, average, or above average.⁸¹ Context for this information is ensured as it is provided alongside information detailing settlement statistics for the particular specialty.⁸² The proposed Mississippi legislation did not provide for any categorization of the settlement amount, physician specialty, or settlement quantity.⁸³

b. Threshold Requirements

Another approach utilized in several states' legislation is to only release physician malpractice settlements or judgments when either a certain threshold dollar amount or threshold number of judgments are reached. In Florida, any settlement in the last ten years must be reported if the payments were in excess of \$100,000 for a medical or osteopathic doctor, or \$5,000 for a podiatrist.⁸⁴ Once a physician's settlement amount exceeds these limits, the actual dollar figure will be made available to the public.⁸⁵

The Idaho legislation sets two different thresholds.⁸⁶ If either threshold is met, then providers must disclose their malpractice settlements from the most recent five years.⁸⁷ The first threshold is satisfied if a physician has had five or more settlements of \$50,000 or more in the most recent five years.⁸⁸ The second threshold requires disclosure if the physician has had ten or more settlements within the most recent five years, regardless of the amount of the settlement.⁸⁹ If

75. N.J. STAT. ANN. § 45:9-22.22 (West 2004).

76. *Id.*

77. *Id.*

78. CAL. BUS. & PROF. CODE § 803.1 (West 2003).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. H.B. 276, 2006 Leg. Reg. Sess. (Miss. 2006).

84. Fla. Stat. § 456.041 (2001). *See also* Fla. Stat. §§ 458.320, 459.0085 (2004).

85. Fla. Stat. § 456.041 (2001).

86. Idaho Code Ann. § 54-4603 (2003).

87. *Id.*

88. *Id.*

89. *Id.*

disclosure is made, the state will publish both the date and exact settlement amount.⁹⁰

As detailed in the prior section, California distinguishes settlement awards between physicians in high-risk and low-risk specialties.⁹¹ Threshold requirements come into play after this classification is made.⁹² A physician in California who practices in a low-risk specialty will have their malpractice settlements released only if they have three or more settlements in the last ten years.⁹³ However, a physician in a high-risk specialty will only have settlements released when they have four or more settlements in the last ten years.⁹⁴ California further limits disclosure by limiting the definition of settlement to those that are greater than \$30,000. As a result, settlements must exceed \$ 30,000 to even be considered in determining whether the physician has met the requisite settlements in the last ten years for disclosure.⁹⁵ The proposed Mississippi legislation did not set any threshold requirements for dollar amounts or quantity of judgments.⁹⁶

c. Issuing Disclaimers

Legislators have recognized that medical malpractice settlements and judgments may not be a good indicator of physician quality. As a result, every state which has passed legislation allowing the release of this information has mandated that specific language accompany the released information. This language disclaims the importance of settlement history and emphasizes that a settlement payment does not mean that malpractice occurred. For example, in Massachusetts, any information concerning settlements must be released with the statement:

Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.⁹⁷

The release of malpractice information in Florida, Rhode Island, and New Jersey is accompanied by virtually identical statements.⁹⁸ Additionally, the legislation in Mississippi, which failed to pass, contained a comparable disclaimer.⁹⁹ Idaho's disclaimer is substantially similar, but concludes with a statement that malpractice histories vary by specialty and that "some specialties are more likely than others to be the subject of litigation."¹⁰⁰

90. *Id.*

91. CAL. BUS. & PROF. CODE § 803.1 (West 2003).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. H.B. 276, 2006 Leg. Reg. Sess. (Miss. 2006).

97. MASS. GEN. LAWS ch.112, § 5 (2004).

98. See Fla. Stat. § 456.041 (2001); R.I. GEN. LAWS § 5-37-9.2 (2004); N.J. STAT. ANN. § 45:9-22.22 (West 2004).

99. H.B. 276, 2006 Leg. Reg. Sess. (Miss. 2006).

100. Idaho Code Ann. § 54-4603 (2003).

California's disclaimer is much more detailed.¹⁰¹ While it includes a statement similar to the one reprinted above, it also contains significant information regarding the methodology behind the information provided.¹⁰² Additionally, the disclaimer encourages consumers to put the information in perspective, stating that consumers "could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history."¹⁰³ The statement concludes by telling consumers that they "may wish to discuss information in this report and the general issue of malpractice with [their] doctor."¹⁰⁴

3. Conclusion

The methods, including categorization, imposing threshold requirements, and mandating express disclaimers, indicate that states are working hard to balance consumer's public safety interest in awareness of malpractice settlements and judgments against protecting those same consumers from putting too great a reliance on malpractice information. While California has enacted legislation that utilizes all three measures—categorizing the settlement, threshold requirements, and disclaimer statements—other states have found balance by utilizing only two of those measures. Only the proposed legislation in Mississippi provided for less than a combination of two of these measures, which could have contributed to its failure to pass this legislative session.

C. Voluntary Mediation Programs for Disputes relating to Property Damage after Natural Disasters: North Carolina Senate Bill 277¹⁰⁵, Louisiana House Bill 444¹⁰⁶, California Senate Bill 2¹⁰⁷

Bill Numbers:	North Carolina Senate Bill 277, Louisiana House Bill 444, California Senate Bill 2
Summary:	These bills establish voluntary mediation programs for disputes regarding property damage created by a natural disaster. These bills create similar programs to the insurance mediation programs enacted through emergency rule by the Department of Insurance in the respective states, including Louisiana Emergency Rule 22, Mississippi Emergency Regulation No. 2005-2, and Florida Rule 69J-2.003.
Status:	North Carolina Senate Bill 277 (signed by Governor July 19, 2006), California Senate Bill 2 (signed by Governor September 30, 2005), Louisiana House Bill 444 (referred to the Committee on Civil Law and Procedure on March 15, 2006)

101. CAL. BUS. & PROF. CODE § 803.1 (West 2003).

102. *Id.*

103. *Id.*

104. *Id.*

105. S.B. 277, 2006 Leg., 1st Sess. (N.C. 2006).

106. H.B. 444, 2006 Reg. Leg. Sess. (La. 2006), available at <http://www.legis.state.la.us/> (last visited December 19, 2006).

107. S.B. 2, 2005-06 Reg. Sess. (Cal. 2005).

1. Introduction

Natural disasters leave communities with extensive property damage. Aside from the physical destruction, property owners have to deal with the resulting legal disputes regarding insurance coverage and creditors. Resolving these disputes quickly and efficiently is also a high priority for the state and property owners. Beginning with Hurricane Andrew in 1992, Florida's Department of Financial Services issued an emergency rule requiring insurance companies to provide the option of mediation to property owners to settle their disputed claims. After the success of this program, other states began implementing similar mediation programs to resolve disputes regarding property destroyed in disasters, including Louisiana and Mississippi following Hurricane Katrina. The majority of these programs are implemented by emergency rule, but more recently, several states are using legislation to enact these programs. The prevalent use of mediation illustrates the utility of alternative methods of dispute resolution to rebuild communities after disasters by resolving claims efficiently and, at the same time, protecting the rights of the property owner affected by the disaster.

2. Application of Voluntary Mediation Programs after Disaster

Voluntary mediation programs to resolve insurance property disputes, primarily relating to coverage under homeowner's policies, have been enacted in Florida, Louisiana, Mississippi, North Carolina, and California.

The first use of alternative dispute resolution in a natural-disaster situation was the insurance mediation program implemented in Florida to respond to Hurricane Andrew in 1992.¹⁰⁸ Florida's state Department of Financial Services issued an emergency rule, creating the "Alternative Procedures for Resolution of Disputed Claims from Hurricane Andrew."¹⁰⁹ The American Association of Arbitrators (AAA) administered the program and achieved a 92% settlement rate.¹¹⁰ Most recently, Florida utilized existing mediation centers operating since Hurricane Andrew for the 2004 storm-related claims.¹¹¹ In addition to the continuing operation of this program in Florida, this program became a model for other states, including California, Louisiana, and Mississippi, to resolve insurance claims after disaster.¹¹²

In California, the AAA administered an alternative dispute resolution program to resolve insurance claims arising from the 1994 Northridge Earthquake, offering evaluation and assessment, mediation, and non-binding and binding arbitration.¹¹³ On September 30, 2005, Governor Schwarzenegger signed into law a

108. Cindy Fazzi, *Disaster: When it Strikes, ADR Can Come to the Rescue in Resolving Mass-Tort Claims*, 53 DISP. RESOL. J. 16, 17 (1998).

109. *Id.* at 16.

110. *Id.* at 17.

111. Russ Blemer, *Insurance Issues Mobilize the ADR Community in the Wake of Gulf Coast Hurricanes*, 23 ALT. HIGH COST LITIG. 171, 172 (2005). Florida issued a new emergency rule for the 2004 hurricane season. See FLA. ADMIN. CODE ANN. r. 69J-2.003 (2006). This rule superseded all previous rules, but the only substantive change from previous versions was the timeframe for which the rule applies. *Id.*

112. *Id.*

113. Fazzi, *supra* note 108, at 18.

bill making permanent an earthquake and disaster mediation program that applies to damage caused by earthquakes and wildfires.¹¹⁴

North Carolina recently passed Senate Bill No. 277 providing for mediation of emergency or disaster related property insurance claims.¹¹⁵ The bill became effective on July 19, 2006.¹¹⁶

Louisiana and Mississippi began voluntary mediation programs to respond to the property damage from Hurricane Katrina. Both states enacted their programs through an emergency rule,¹¹⁷ which stays in effect indefinitely, to respond to the policyholder's dissatisfaction with payouts.¹¹⁸ The insurance companies claimed that their policies covered damage from wind and rain, but not damage from flooding.¹¹⁹ Therefore, the insurance company argued that the damage to the property was not covered under the hurricane insurance policy, but rather is damage from flooding, which was provided to homeowners via the National Flood Insurance Program for those who have purchased it.¹²⁰ Policy holders argued that the wind and rain caused the flooding.¹²¹ To further complicate the issue, in these hurricane-affected areas, the property may no longer exist, resulting in further proof problems for policyholders to argue coverage.¹²²

In addition, Louisiana proposed to enact a voluntary mediation program to resolve disputes outside of the insurance context and introduced a bill creating a voluntary mediation program to resolve disputes between debtors and creditors. Louisiana introduced House Bill 444 on March 15, 2006, sponsored by Representative Jefferson, which creates the Hurricane Victim's Mediation Program.¹²³ This program creates a voluntary mediation program, similar to the programs used to resolve insurance disputes, to debtors and creditors with an interest in the property damaged by the hurricane.¹²⁴ Specifically, this program applies to disputes between a hurricane victim, defined as someone with at least twenty thousand dollars in outstanding debt secured by immovable property damaged by Hurricane Katrina or Rita, and a creditor who holds a mortgage, lien, or security interest on the hurricane victim's property.¹²⁵

3. Basic Provisions of the Disaster-Relief Voluntary Mediation Programs

Although each of the states are responding to different natural disasters, the voluntary mediation programs regulate the same basic elements: defining the claims that are eligible to participate in the program, providing guidelines and

114. Blemer, *supra* note 111, at 173.

115. S.B. 277, 2006 Leg., 1st Sess. (N.C. 2006).

116. *Id.*

117. LA. ADMIN. CODE tit. 37, § 4101-4127 (2006); 2005-2 MISS. CODE R. §§ 1-11 (2005).

118. ADR Brief, *Mediation Matters: States, Insurers Focus on ADR for Katrina Relief*, 24 ALT. HIGH COST LITIG. 59, 61 (2006).

119. *Id.* at 59.

120. *Id.*

121. *Id.*

122. Blemer, *supra* note 111, at 171.

123. H.B. 444, 2006 Reg. Leg. Sess. (La. 2006), available at <http://www.legis.state.la.us/> (last visited December 19, 2006).

124. *Id.*

125. *Id.*

structure for the administration of the mediation, as well as determining the effect of the settlement agreement, if any, reached through the mediation.

The mediation programs are all voluntary for the policyholder, but mandatory for the insurer if the policyholder requests it.¹²⁶ However, only a subset of insurance claims can take part in the program. All of the programs, excluding California's,¹²⁷ only apply to residential property insurance claims and specifically exclude commercial property claims and automobile claims.¹²⁸ The residential property claim must be caused by disaster.¹²⁹ Louisiana, Mississippi, and Florida define the emergency rule to only apply to insurance claims from damage of the recent hurricane, the name of which is designated in the rule.¹³⁰ California's mediation program applies categorically to claims for loss caused by an earthquake or wildfire.¹³¹ North Carolina's program is the least restrictive of all the states, applying to all residential property insurance claims caused by disaster.¹³²

The insurance voluntary mediation programs only apply to claims meeting a threshold amount in controversy. In Florida, Louisiana, and Mississippi, the amount in dispute must be \$500 or more to qualify for the program.¹³³ California and North Carolina require a larger amount in controversy. In North Carolina, the amount in dispute must exceed \$1,500¹³⁴ and in California, the claim must exceed \$7,500 with \$2,000 in dispute.¹³⁵

Louisiana's proposed legislation establishing a voluntary mediation program between debtors and creditors includes similar basic provisions as the mediation programs established to resolve insurance disputes. The program is voluntary, but the bill provides that voluntary mediation must occur prior to an action in court unless the creditor obtains a release.¹³⁶ The bill restricts its application by narrowly defining "hurricane victim," to which the act exclusively applies.¹³⁷ "Hur-

126. See N.C. GEN. STAT. § 58-44-80(a) (2006); LA. ADMIN. CODE tit. 37, § 4107 (2006); 2005-2 MISS. CODE R. § 4 (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 §3(a) (2006); CAL. INS. CODE § 10089.74(a) (2006).

127. California includes claims arising from automobile physical damage coverage and automobile collision coverage. See CAL. INS. CODE § 10089.70(a)(3) (2006).

128. See N.C. GEN. STAT. § 58-44-115(b) (2006); LA. ADMIN. CODE tit. 37, § 4103(a) (2006); 2005-2 MISS. CODE R. §2 (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 §2(b) (2006).

129. North Carolina and California also require that the Governor declare a state of emergency. See N.C. GEN. STAT. § 58-44-115(a) (2006); CAL. INS. CODE § 10089.70(a)(1), (2) (2006).

130. See LA. ADMIN. CODE tit. 37, § 4103(A) (2006) (voluntary mediation program applies to "personal lines insurance claims arising out of damages to residential property caused by hurricanes Katrina and Rita"); 2005-2 MISS. CODE R. § 2 (2005) ("regulation establishes a special mediation program for personal lines residential insurance claims resulting from Hurricane Katrina"); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 1 (2006) ("damages to residential property caused by hurricanes and tropical storms during the 2004 and 2005 hurricane seasons").

131. CAL. INS. CODE §10089.70(a)(1)-(2) (2006).

132. N.C. GEN. STAT. § 58-44-115(a) (2006).

133. See LA. ADMIN. CODE tit. 37, § 4105 (2006); 2005-2 MISS. CODE R. § 3(b) (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 §2(b) (2006).

134. N.C. GEN. STAT. §58-44-75(3) (2006).

135. CAL. INS. CODE § 10089.72(b) (2006).

136. H.B. 444, Reg. Sess. (La. 2006) available at <http://www.legis.state.la.us/> (last visited December 19, 2006). The bill provides that a creditor can be released from participation in the voluntary mediation program if the hurricane victim removes or has removed the property out of the state, sold, conveyed or otherwise disposed of the property, or had the intent to sell, dispose or remove their property. *Id.* § 4257.

137. *Id.* § 4256.

ricane victim” is defined as any person with at least twenty thousand dollars in outstanding debt secured by immovable property damaged by Hurricane Rita or Katrina.¹³⁸

4. The Mediation Conference

The mediation programs also create similar regulations for the structure of the mediation, including notification, administration, and effect of the settlement agreement. All of the programs contain detailed guidelines for all stages in the mediation, creating a structured process from the beginning to end of the mediation. These guidelines and regulations have the most impact on the insurance industry, limiting their discretion in the decision to use mediation to resolve the claims and the structure of the mediation. In a similar manner, the proposed voluntary mediation program in Louisiana affects the creditors, requiring similar duties and procedures as required from the insurers.

The insurance mediation programs in Florida, Louisiana, Mississippi, and North Carolina require the insurer to notify the policyholder of the right to mediate immediately after they receive from the policyholder notice of the dispute.¹³⁹ The states vary on the amount of days: Louisiana, Florida, and North Carolina require notice to be sent in five days,¹⁴⁰ whereas Mississippi allows ten days for the insurer to send notice.¹⁴¹ The content of the notice must comply with the language in the rules or the statute, which includes a statement informing the policyholder that they have the right to mediate to settle the dispute with an independent mediator, how to request the mediation, and the insurer’s address to receive additional information.¹⁴² The policyholder then has the option to mediate the claim, sending the request to mediate to the administrator of the mediation.¹⁴³

California’s provisions regarding notification operates differently and places more responsibility on the policyholder, requiring them to file a written complaint with the department indicating the dispute. The department attempts to help resolution,¹⁴⁴ and if the dispute is not resolved within twenty-eight days, the department can refer the parties to mediation.¹⁴⁵

Louisiana’s proposed voluntary mediation program involving disputes between debtors and creditors requires the creditors to send notice to the debtor, or hurricane victim as defined in the bill, of the right to request mandatory mediation of the indebtedness.¹⁴⁶ The bill provides that the content of the notice will be

138. *Id.* § 4252(3).

139. *See* LA. ADMIN. CODE tit. 37, § 4107 (2006); 2005-2 MISS. CODE R. §4 (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 3 (2006); N.C. GEN. STAT. §58-44-80(a) (2006).

140. *See* LA. ADMIN. CODE tit. 37, § 4107 (2006); FLA. ADMIN. CODE ANN. r. 69J-2.003 §3 (2006); N.C. GEN. STAT. §58-44-80(b) (2006); CAL. INS. CODE § 10089.72 (2006).

141. 2005-2 MISS. CODE R. §4 (2005).

142. *See* LA. ADMIN. CODE tit. 37, § 4107 (B), (C) (2006); 2005-2 MISS. CODE R. § 3 (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 3 (2006); N.C. GEN. STAT. §58-44-80(b), (c) (2006).

143. *See* LA. ADMIN. CODE tit. 37, § 4109 (2006); 2005-2 MISS. CODE R. § 5 (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 4 (2006); N.C. GEN. STAT. §58-44-85 (2006).

144. CAL. INS. CODE § 10089.71 (2006).

145. *Id.* § 10089.72(a).

146. H.B. 444, Reg. Sess. (La. 2006) available at <http://www.legis.state.la.us/> (last visited December 19, 2006).

determined by rule, but must contain the name and address of the creditor, a description of the debt and the property securing the debt, and the location where the hurricane victim can receive a form to request mediation.¹⁴⁷ The hurricane victim must send their request to mediate to the commissioner fourteen days after receiving notice of the right to mediate from the creditor.¹⁴⁸

If the dispute is subject to mediation, the administrator of the mediation program selects the mediator and schedules a time for the mediation to take place. In Louisiana and Mississippi, the administrator is the American Arbitration Association (AAA).¹⁴⁹ In North Carolina and California, the Commissioner selects the mediator by the guidelines determined by the act.¹⁵⁰ In Florida, the emergency rule requires the mediators to be selected from a panel of Circuit Court Civil Mediators approved by the Florida Supreme Court.¹⁵¹ The proposed legislation for the voluntary mediation program between debtors and creditors in Louisiana provides that the commissioner of the Office of Financial Institutions will select the mediator.¹⁵² Each of the programs, except the proposed legislation in Louisiana, set general guidelines for conduct during the mediation and include a provision that requires all parties to mediate in good faith.¹⁵³

Several of the programs designate the role of attorneys, expressing a preference for an informal dispute resolution without attorney involvement. Louisiana's program for voluntary mediation of insurance disputes states that it is not necessary to involve a private attorney and participation by private attorneys is discouraged by the Department.¹⁵⁴ However, if the policyholder wants to have an attorney, they must notify the administrator before the mediation.¹⁵⁵ In Florida, both parties are allowed to have representation, but the "parties and their representatives must refrain from turning the conference into an adversarial process."¹⁵⁶ Louisiana's program also states that the Department will provide an attorney to help the policyholder prepare for the mediation, providing legal and technical insurance information, but this attorney will not assume an advocacy role.¹⁵⁷

The proposed legislation in Louisiana for resolving disputes between debtors and creditors encourages each party to have representation, stating that each party has a right to an attorney and any waiver of this right prior to the mediation or hearing is ineffective.¹⁵⁸ This program also provides a detailed list of duties for

147. *Id.*

148. *Id.*

149. See LA. ADMIN. CODE tit. 37, § 4105 (2006); 2005-2 MISS. CODE R. § 3(a) (2005).

150. See CAL. INS. CODE § 10089.77 (2006); N.C. GEN. STAT. §58-44-75(1) (2006).

151. FLA. ADMIN. CODE ANN. r. 69J-2.003 § 2(d) (2006). Previous emergency rules in Florida, enacted in the early 1990s, used the AAA to administer the mediations. See Fazzi, *supra* note 108, at 16.

152. H.B. 444, Reg. Sess. (La. 2006), available at <http://www.legis.state.la.us/> (last visited December 19, 2006).

153. See LA. ADMIN. CODE tit. 37, § 4115 (A)(4) (2006); 2005-2 MISS. CODE R. §7(g) (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 9 (2006); N.C. GEN. STAT. §58-44-100(b) (2006); CAL. INS. CODE § 10089.81 (2006).

154. LA. ADMIN. CODE tit. 37, § 4115 (A) (2006).

155. § 4115 (A)(1).

156. FLA. ADMIN. CODE ANN. r. 69J-2.003 § 8(a) (2006).

157. LA. ADMIN. CODE tit. 37, § 4115 (B) (2006).

158. H.B. 444, Reg. Sess. (La. 2006) available at <http://www.legis.state.la.us/> (last visited December 19, 2006).

the mediator, which was absent in the voluntary mediation programs for insurance disputes.¹⁵⁹

Lastly, all of the voluntary mediation programs for insurance disputes state that the results of the mediation were nonbinding unless the parties reached a settlement agreement.¹⁶⁰ Even if a settlement agreement is reached, the policyholder had three days to rescind the agreement as long as they had not yet received any payment from the insurer.¹⁶¹ In North Carolina, the Commissioner can withdraw the policyholder's rescission if he or she finds that the agreement was fair to both parties.¹⁶² All of the programs provide that the insurer will pay the fees for the mediation process regardless of the outcome.¹⁶³

The proposed voluntary mediation program for debtors and creditors provides different treatment of the settlement agreement as well as a different source of funding for the mediation than the insurance mediation programs. The bill provides that any agreement reached during the mediation would be enforced as a legal contract between debtor and creditor.¹⁶⁴ In addition, the creditor, unlike the insurer, does not have to pay the cost of the mediation.¹⁶⁵ Rather, the bill requires the commissioner of the Office of Financial Institutions to apply for financial assistance for the administration and operation of the program.¹⁶⁶

5. Conclusion

Voluntary mediation programs are becoming an increasingly prevalent response to property-damaging natural disasters. The recent trend towards codifying these programs into law demonstrates the success of mediation in these disputes. The expediency provided by these programs is also a significant advantage. Most of the programs take place within a month from the notice provided to the policyholder, and if the policyholder elects, the settlement in the mediation can produce finality to the dispute. The programs are voluntary and place the costs on the insurance company. In addition, although not yet implemented, Louisiana proposed use of this program outside of the insurance context indicates the utility and versatility of mediation to resolve different types of disputes involving property destroyed or damaged by natural disasters.¹⁶⁷

On the other hand, the actual amount of settlement reached in these mediation conferences is not disclosed. Only the insurance mediation program in Louisiana

159. *Id.*

160. *See* LA. ADMIN. CODE tit. 37, § 4119(A)(1) (2006); 2005-2 MISS. CODE R. § 8(b) (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 9 (2006); N.C. GEN. STAT. §58-44-105(b) (2006); CAL. INS. CODE § 10089.82(b) (2006).

161. *See* LA. ADMIN. CODE tit. 37, § 4119(A)(3)(2006); 2005-2 MISS. CODE R. § 8(b) (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 9 (2006); N.C. GEN. STAT. §58-44-105(c) (2006); CAL. INS. CODE § 10089.81(c) (2006).

162. N.C. GEN. STAT. § 58-44-115 (2006).

163. *See* LA. ADMIN. CODE tit. 37, § 4111 (2006); 2005-2 MISS. CODE R. § 7(c) (2005); FLA. ADMIN. CODE ANN. r. 69J-2.003 § 5 (2006); N.C. GEN. STAT. §58-44-90(a); CAL. INS. CODE § 10089.79(a) (2006).

164. H.B. 444, Reg. Sess. (La. 2006), *available* at <http://www.legis.state.la.us/> (last visited December 19, 2006).

165. *Id.*

166. *Id.*

167. *Id.*

provides guidelines for determining the cost of repair, stating that parties shall use the current construction pricing as the starting point in the dispute resolution process.¹⁶⁸ There is also no way to tell if the property owner would recover more if the dispute was settled through a different method. These concerns may be alleviated by giving the policyholder the option to litigate the dispute and decline the mediation. However, this will not be the most attractive choice to the property owner who wants to rebuild and return to their residence as quickly as possible.

D. Mediating Agricultural Nuisances: Maryland House Bill 396¹⁶⁹

Bill Number:	Maryland House Bill 396
Summary:	This bill requires a person filing a nuisance action against an agricultural operation or marketing in any court to first file a complaint with a specified local agency or to refer a complaint to the state agricultural mediation program in the Department of Agriculture and to obtain a decision or recommendation from the local agency on the nuisance complaint or a certification from the Department on the nuisance complaint. This would not apply to actions brought by a government agency.
Status:	Signed by Governor, April 25, 2006

1. Introduction

With a growing number of residential developments encroaching upon rural communities, disputes between agricultural operations and neighboring landowners are increasing in number. Maryland has responded to these disputes in several different ways, attempting to enact safeguards to protect the rights of agricultural operations and limit nuisance claims filed in court. Many counties in Maryland have recently adopted ordinances, known as “Right to Farm” regulations, to deal with disputes between agricultural operations and neighboring landowners.¹⁷⁰ Alternatively, many counties in the state have created Agricultural Reconciliation Committees (ARC),¹⁷¹ the purpose of which is to mediate and arbitrate disputes over agricultural operations, specifically those alleging interference with the use or enjoyment of property due to the agricultural operations.¹⁷² The decisions of the ARCs have a binding effect as a matter of law, but the enforcement will be suspended if either party appeals the decision in circuit court within thirty days of the rendering of the committee’s decision.¹⁷³ However, the effectiveness of the ARC is severely limited by the lack of public awareness.¹⁷⁴ Many residents, citi-

168. LA. ADMIN. CODE tit. 37, § 4117(B) (2006).

169. H.B. 396, 2006 Reg. Sess. (Md. 2006), available at <http://mlis.state.md.us/2006rs/bills/hb/hb0396t.pdf> (last visited December 19, 2006).

170. H.B. 396, Fiscal & Policy Note, available at http://mlis.state.md.us/2006rs/fnotes/bil_0006/hb0396.pdf (last visited December 19, 2006).

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

zens, and members of the legal community are unaware of the existence of ARCs, which results in claims being filed in circuit court that should be referred to an ARC.¹⁷⁵

Maryland House Bill 396 was introduced January 26, 2006.¹⁷⁶ The primary sponsor was Representative Page Elmore.¹⁷⁷ The bill was referred to the committee on Environmental Matters¹⁷⁸ and eventually passed by the House 135 to 0 on March 10, 2006, having undergone no major changes.¹⁷⁹ The bill was referred to the Senate on March 13, 2006, where it was referred to the Committee on Health, Education and Environmental Matters.¹⁸⁰ The bill was passed unchanged by the Senate by a 35 to 0 vote on March 30, 2006, and was signed by Governor Robert L. Ehrlich, Jr. on April 25, 2006.¹⁸¹

2. The Bill

House Bill 396 seeks to restrict nuisance claims against agricultural operations¹⁸² by requiring the claimants to seek alternative dispute resolution procedures before filing a nuisance claim in court.

In order for the bill to apply, the agricultural operation must meet several initial requirements. The agricultural operation must have been in existence for at least one year¹⁸³ and must be in compliance with applicable federal, state, and local health, environmental, zoning, and permit requirements relating to any nuisance claim.¹⁸⁴ The operation must also not be conducted in a negligent manner.¹⁸⁵ The bill does not apply to an agricultural operation proceeding without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus, if it is required to do so by law.¹⁸⁶ If the agricultural operation fulfills these initial requirements, then it is immune from being declared a public or private nuisance unless either of two procedures, described in the bill, is carried out.¹⁸⁷ The bill does not prevent federal, state, or local governments from enforcing applicable laws against agricultural operations or operators.¹⁸⁸

The procedure the complaining party must seek before filing in court depends upon the existence of an ARC in the county of the agricultural operation. In a

175. *Id.*

176. H.B. 396, Bill History, available at <http://mlis.state.md.us/2006rs/billfile/HB0396.htm> (last visited December 19, 2006).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. "Agricultural operation" means an operation for the processing of agricultural crops or on-farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer. See H.B. 396, 2006 Reg. Sess. (Md. 2006), available at <http://mlis.state.md.us/2006rs/bills/hb/hb0396t.pdf> (last visited December 19, 2006).

183. H.B. 396, 2006 Reg. Sess. (Md. 2006).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* This includes noise, odors, dust, or insects resulting from the operation. *Id.*

188. *Id.*

county which has created an ARC, a potential complainant must file a complaint with the ARC and obtain a ruling from the agency.¹⁸⁹ If no local agency exists, the complaining party must file with the Agricultural Mediation Program in the Maryland Department of Agriculture, and obtain a certification from the department that mediation has been concluded.¹⁹⁰ After completing one of these procedures, a complaining party can seek to have a court declare an agricultural operation either a public or private nuisance.¹⁹¹

Representative Elmore, the primary sponsor of the bill, states that the bill added a layer of oversight against nuisance complaints directed at farmers.¹⁹² Representative Elmore adds that the bill supports farmers by adding the additional protection of a local board to evaluate the legitimacy of a complaint.¹⁹³ "The people complaining are coming from Philadelphia and New Jersey," and "any nuisance complaint against a farmer first had to be heard by a local board before it could be tried in court."¹⁹⁴ The bill took effect on October 1, 2006.¹⁹⁵

3. Conclusion

Maryland House Bill 396 adds two additional protections to farmers and farming operations. In counties that had already adopted ARCs, the bill only re-emphasizes that a person must first go through the ARC and its appeal procedure before they may maintain a nuisance action against an agricultural operation. In those counties that have not adopted ARCs, farmers are now immune from having nuisance suits brought against them without first having the Department of Agriculture mediate the dispute. This added step should decrease the overall number of nuisance suits brought against farming operations in court, saving resources of both the courts and the parties involved.

E. ADR in Fire Code Disputes: Kansas House Bill 2978¹⁹⁶

Bill Number:	Kansas House Bill 2978
Summary:	Provides for an informal dispute resolution procedure in disputes concerning fire code deficiencies.
Status:	Assigned to an interim committee for further study, March 30, 2006

189. H.B. 396, Fiscal & Policy Note, available at http://mlis.state.md.us/2006rs/fnotes/bil_0006/hb0396.pdf (last visited December 19, 2006). Counties which have adopted ARC's include Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, and Wicomico. *Id.*

190. *Id.*

191. *Id.*

192. Joseph Gidjunis, *Incumbent Page Elmore Pits Record against Youthful Foe Patrick Armstrong*, SALISBURY MD. DAILY TIMES, August 15, 2006.

193. *Id.*

194. *Id.*

195. See MD. CODE ANN., CTS. & JUD. PROC. § 5-403 (LexisNexis 2006).

196. H.B. 2978, 81st Legis. 2006 Reg. Sess. (Kan. 2006), available at <http://www.kslegislature.org/bills/2006/2978.pdf> (last visited December 19, 2006).

1. Introduction

Kansas House Bill 2978 provides for an informal dispute resolution procedure to dispute fire code deficiencies. The bill was introduced on February 22, 2006, and was immediately referred to the House Committee on Appropriations.¹⁹⁷ The bill was passed by the Appropriations Committee and on March 23, 2006, the bill passed in the House by a vote of 124 to 0.¹⁹⁸ The bill was sent to the Senate Committee on Ways and Means, which held a public hearing on March 30, 2006, and heard testimony from the State Fire Marshal as well as from representatives from the Kansas Hospital Association and the Propane Marketers Association of Kansas, among others.¹⁹⁹ After oral and written testimony, a motion was passed to assign the bill to an interim committee for the summer, along with four other bills concerning the State Fire Marshal.²⁰⁰

2. The Bill

House Bill 2978 creates an informal dispute resolution procedure for businesses or residences to dispute fire code deficiencies. Specifically, the owner or resident may receive a review from an independent panel regarding deficiencies found during an inspection.²⁰¹ The bill applies to inspections performed by officers and agents of the State Fire Marshal as well as those inspections done by a fire chief or fire inspector of the city.²⁰² To receive the review, the owner or resident must make a written request to the State Fire Marshal within ten days of receipt of a statement of deficiencies; requests are limited to one per each inspection.²⁰³ The written request must state the specific deficiencies being disputed, provide a detailed explanation of the basis for the dispute, and include any supporting documentation, including any information that was not available at the time of the inspection.²⁰⁴

Upon receiving the written request, the State Fire Marshal will appoint the independent review panel, comprised of three members: one an employee of the State Fire Marshal's office and the other two from outside the office.²⁰⁵ The bill gives no guidance as to the selection of the two members outside the State Fire Marshal's office.²⁰⁶ The State Fire Marshal is to bear the costs of the panel, including travel expenses.²⁰⁷ The decision of the independent review board is an

197. *Id.*

198. *Id.*

199. H.B. 2798, 81st Legis. 2006 Reg. Sess. (Kan. 2006), Minutes from the Ways and Means Committee, March 30, 2006, *available at* <http://72.14.209.104/search?q=cache:MeVwfo9v8YsJ:www.kslegislature.org/committeeminutes/05-06/senate/swaysmeans/SntWayMea03302006.pdf+Kansas,+House+Bill+2978,+Ways+and+Means,+July+21,+2006&hl=en&gl=us&ct=clnk&cd=1> (last visited December 19, 2006).

200. *Id.*

201. H.B. 2978, 81st Legis. 2006 Reg. Sess. (Kan. 2006), Supplemental Note, *available at* <http://www.kslegislature.org/supplemental/2006/SN2978.pdf> (last visited December 19, 2006).

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. H.B. 2978, 81st Legis. 2006 Reg. Sess. (Kan. 2006).

advisory decision.²⁰⁸ The owner or resident's request for review does not excuse the timely correction of any deficiency and the fact that the review has not been completed before the date of the enforcement action does not result in a delay in enforcement.²⁰⁹

3. Support and Opposition

The bill has several potential problems, predominately pertaining to the difficulty of determining the expense of administration as well as the effect of this bill on the current dispute resolution mechanisms already in place. It is difficult to predict the actual fiscal effect of the bill because it is unknown how many facilities will use this procedure and it is also difficult to calculate the expenses to administer the independent review panel.²¹⁰ The fiscal effect of the bill is roughly estimated at a total cost of \$147,487.²¹¹

The primary argument against the bill is the fact that this dispute resolution system will replace the local dispute resolution techniques that are currently resolving the disputes. The Fire Chief of the Johnson County Fire Chiefs' Association testified to the Ways and Means Committee that problems would be created if local leaders in fire safety were to lose the ability to handle fire code issue disputes through due process in their own communities.²¹² Several industries have asked that they be exempted from the bill in order to retain their current dispute resolution mechanisms tailored specifically to their industry. For example, the Propane Marketers Association of Kansas asked that their industry be exempted or the bill narrowed so that they may retain a system that meets their industry needs.²¹³

On the other hand, supporters of the bill argue that the creation of an independent review panel would be a better informal dispute resolution system than the current system in place. The Kansas Hospital Association (KHA) supported the bill, arguing that the current process of dispute resolution, a meeting between a high-ranking member of the State Fire Marshal staff and a representative of the complaining facility, has led to inconsistent interpretations of the 2000 Life Safety Code, which is the basis of all hospital fire safety inspections.²¹⁴ KHA states that "changing this process to allow for a panel of reviewers is preferable as KHA members need an objective and fair forum in which to challenge fire safety findings."²¹⁵ The State Fire Marshal spoke in favor of the bill, but stated that more research was required to ensure that it coincided properly with bills introduced along with this one.²¹⁶

208. *Id.*

209. *Id.*

210. H.B. 2978, H.B. 2978, 81st Legis. 2006 Reg. Sess. (Kan. 2006), Fiscal Note, available at <http://www.kslegislature.org/fiscalnotes/2006/2978.pdf> (last visited December 19, 2006).

211. *Id.*

212. H.B. 2978, 81st Legis. 2006 Reg. Sess. (Kan. 2006), Minutes from the Ways and Means Committee, March 30, 2006, *supra* note 199.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

4. Conclusion

The Kansas Legislature has yet to take any further actions concerning House Bill 2978. The benefits of creating this limited informal review could be extremely valuable to businesses that may otherwise incur great expense to correct a deficiency or that are unhappy with the current method of dispute resolution in their industry. The creation of a centralized system to provide an objective review of fire code deficiency findings may lead to more consistent results. However, these benefits must be balanced with the cost of administration as well as the possible disadvantages with replacing the current systems.

II. HIGHLIGHTS

A. California Assembly Bill 402²¹⁷

Parties to dissolution, nullification of marriage, or legal separation proceedings in California may now utilize a collaborative law process rather than an adversarial judicial proceeding to resolve their disputes.²¹⁸ Assembly Bill 402 was introduced by Assembly Member Mervyn M. Dymally on February 15, 2005,²¹⁹ and had the backing of the Family Law Section of the California State Bar.²²⁰ “The very nature of divorce puts added strain on all parties, especially the children of the marriage.”²²¹ Collaborative law processes attempt to ease this strain by employing client-centered, interest-based negotiation facilitated by lawyers,²²² and in so doing seek to “maximize settlement options for the benefit of both parties and children and to minimize or eliminate the negative economic, social and emotional consequences of litigation.”²²³ The bill is modeled after similar, very successful Texas legislation.²²⁴ Bill supporters hope that with the passage of this bill, “more practitioners will look to the collaborative model [in California] and the judiciary will put [its] weight of approval behind the process.”²²⁵

217. A.B. 402, 2005-06 Reg. Sess. (Cal. 2006).

218. See generally A.B. 402, 2005-06 Reg. Sess. (Cal. 2006).

219. A.B. 402, History, available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0401-0450/ab_402_bill_20060927_history.html (last visited Dec. 19, 2006).

220. A.B. 402, Bill Analysis, available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0401-0450/ab_402_cfa_20060628_134104_sen_comm.html (last visited Dec. 19, 2006).

221. Press Release, Assembly Member Mervyn Dymally, Governor Signs Dymally’s Groundbreaking Family Law Bill (Sept. 28, 2006), available at <http://democrats.assembly.ca.gov/members/a52/press/p522006043.htm>.

222. Gay G. Cox & Robert J. Matlock, *The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45, 47 (2004).

223. Press Release, Assembly Member Mervyn Dymally, *supra* note 221.

224. A.B. 402, Bill Analysis, available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0401-0450/ab_402_cfa_20060628_134104_sen_comm.html (last visited Dec. 19, 2006). For a thorough review of the Texas collaborative law effort, see Cox & Matlock, *supra* note 222, at 45-69.

225. A.B. 402, Bill Analysis, *supra* note 224.

*B. Delaware House Bill 454*²²⁶

House Bill 454 establishes a mandatory mediation program for disputes between homeowner/condominium associations and homeowners regarding deed covenants or restrictions.²²⁷ Section 1(a) of the bill establishes three prerequisites: (1) a lawsuit has been filed; (2) one party is an association, if one exists; and (3) one party is a homeowner.²²⁸ Once suit has been filed, the parties have sixty days to schedule and hold a mediation with a Master in Chancery.²²⁹ In the event that the mediation is not successful, the trial must be held within 120 days, absent good cause for delaying.²³⁰ Interestingly, section 1(e) of the bill contains a “loser pays” provision: the party that did not prevail at trial is responsible for the prevailing party’s attorney’s fees and costs, unless the court finds that this would result in an unfair, unreasonable, or harsh outcome.²³¹ Also, the bill is silent about whether the mediating Master in Chancery may, or even must, be the same Master presiding over the trial.²³² If permitted, this practice could reduce the effectiveness of mediation, or at the very least could complicate the dynamic of the mediation. House Bill 454 was signed into law on July 6, 2006.²³³

*C. Hawaii Senate Bill No. 3238*²³⁴

Hawaii Senate Bill No. 3238 was introduced on January 25, 2006. The bill amends Section 572-5, which pertains to marriage licenses, including who can issue marriage licenses, fees, and information provided to marriage license applicants.²³⁵ The statute currently provides that marriage license applicants receive information relating to population stability, family planning, fetal alcohol and drug syndromes, and acquired immune deficiency virus.²³⁶ This bill requires the department of health or its agents to provide information regarding parenting, the divorce litigation process including the availability and benefit of alternative dispute resolution processes, and domestic violence.²³⁷ The legislature finds that there is a lack of resources available to educate the public on family law proceedings, specifically the divorce litigation processes, and the benefits of dispute resolution in these matters.²³⁸ Providing this information to all applicants for marriage

226. H.B. 454, 43rd Gen. Assem., 2nd Reg. Sess. (Del. 2006).

227. *Id.*

228. *Id.* This section also provides that mediations that take place pursuant to this statute are confidential (i.e., not of public record). *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *See id.*

233. H.B. 454, Bill History, available at <http://www.legis.state.de.us/LIS/LIS143.NSF/vwLegislation/HB+454?Opendocument> (last visited Dec. 19, 2006).

234. S.B. 3238, 23rd Leg. (HI 2006), available at <http://www.capitol.hawaii.gov/site1/docs/docs.asp?press1=docs> (last visited December 14, 2006).

235. HAW. REV. STAT. § 572-5 (2005).

236. *Id.*

237. *Id.*

238. *Id.*

licenses will help promote awareness and provide an opportunity to advocate for the use of dispute resolution to resolve family law disputes.

D. Georgia Senate Bill No. 564²³⁹

Georgia Senate Bill No. 564 was introduced on February 16, 2006 and was sent to the Senate Special Judiciary Committee that same day.²⁴⁰ This bill is sponsored by Senator Meyer von Bremen. The bill amends Section 9-9-3 of the Georgia Arbitration Code which provides that a written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit any controversy thereafter to arbitration is enforceable and confers jurisdiction on the courts of the state to enforce it.²⁴¹ The bill creates a new section providing additional notice requirements if the agreement to arbitrate specifies a particular arbitrator or a method or appointment of arbitrators.²⁴² In order for these agreements to be valid, the written agreement must contain a separate page attached as an exhibit which states the fee schedule of any arbitrator named in the agreement, the location of the arbitrator's place of business, and an acknowledgement of all parties affirmatively consenting to such arbitrator or method of appointment.²⁴³ Lastly, the bill repeals all acts in conflict with this new addition.²⁴⁴ This separate addendum required by the bill is intended to provide better notice to parties of certain information in the agreements before it is considering mandatory and enforceable when controversy arises.

E. New Jersey A.B. 1818²⁴⁵

This bill was introduced on January 10, 2006 by Assemblywoman Linda Greenstein and at that time, it was referred to the Assembly Committee on Judiciary.²⁴⁶ No action has been taken on this bill since that date.²⁴⁷ Under this proposed legislation, courts may divert delinquency complaints to the victim-juvenile offender mediation program.²⁴⁸ Juvenile victim-offender mediation has become increasingly prevalent in recent years as programs have been established in several states including Ohio²⁴⁹ and Connecticut.²⁵⁰ Studies have found that juveniles who have participated in mediation programs had only an 18% recidivism rate,

239. S.B. 564, 148th Gen. Assem., Reg. Sess. (Ga. 2006), available at: http://www.legis.state.ga.us/legis/2005_06/sum/sb564.htm (last visited December 19, 2006).

240. *Id.*

241. GA. STAT. ANN. § 9-9-3 (2006).

242. S.B. 564, 148th Gen. Assem., Reg. Sess. (Ga. 2006).

243. *Id.*

244. *Id.*

245. A.B. 1818, 212th Leg., Reg. Sess. (N.J. 2006).

246. A.B. 1818, Status, available at <http://www.njleg.state.nj.us/bills/BillView.asp> (last visited December 19, 2006).

247. A.B. 1818, 212th Leg., Reg. Sess. (N.J. 2006).

248. *Id.*

249. Stephanie A. Beauregard, *Court-Connected Juvenile Victim-Offender Mediation: An Appealing Alternative for Ohio's Juvenile Delinquents*, 13 OHIO ST. J. ON DISP. RESOL. 1005, 1023 (1998).

250. Marilou T. Giovannucci, *Connecticut State Judicial Branch, Mediation of Child Protection Proceedings-The Connecticut Juvenile Court's Approach*, available at <http://www.casenet.org/library/advocacy/mediat.htm> (1999).

less than the 27% recidivism found in juveniles who did not participate in similar programs.²⁵¹ An additional benefit of victim-offender mediation is that victims who participate in this program report much higher levels of satisfaction than those whose cases are adjudicated in a juvenile court.²⁵²

F. New Hampshire House Bill 1419²⁵³

New Hampshire House Bill 1419 relates to mediation in divorce proceedings and enables the court to order mediation upon the request of either party to the divorce, or upon the discretion of the court.²⁵⁴ Courts may choose not to order mediation in several instances, such as a showing of undue hardship, a finding of alcoholism or drug abuse, an allegation of emotional or psychological abuse, or lack of an available mediator within a reasonable time period.²⁵⁵ The bill also addresses the party's conduct at the mediation, requiring the parties to mediate in good faith, and instructs the mediator to return the dispute to the court if they determine the mediation is not helpful in resolving the dispute.²⁵⁶ Settlement is to be voluntary, and the mediator does not have the authority to impose a settlement agreement.²⁵⁷ If no settlement is reached, the parties lose none of their rights to a resolution of their dispute through litigation.²⁵⁸ The bill was introduced on January 4, 2006 and after several amendments, was signed into law by the Governor on May 25, 2006.²⁵⁹

G. Rhode Island House Bill 7203²⁶⁰

Rhode Island House Bill 7203 relates to the arbitration of labor controversies.²⁶¹ The bill establishes a public policy that arbitration is the preferred method of dispute resolution for labor/management disputes.²⁶² The bill also gives the court discretion to vacate the award on certain specified grounds, modifying the existing statute which provides that the court "must" vacate to read that the court "may" vacate.²⁶³ The grounds on which the court may vacate the award include a finding that the award was procured by fraud, a finding that the arbitrator ex-

251. Mark S. Umbreit, *Restorative Justice – Having Offenders Meet with Their Victims Offers Benefits for Both Parties*, CORRECTIONS TODAY, at 164 (July 1991).

252. Marianne McConnell, *Mediation—An Alternative Approach for the New Jersey Juvenile Justice System?* 20 SETON HALL LEGIS. J. 433, 455 (1996) (citing Umbreit, *supra* note 251).

253. H.B. 1419, 159th Leg., Reg. Sess. (N.H. 2006), available at <http://www.gencourt.state.nh.us/legislation/2006/HB1419.html> (last visited December 19, 2006).

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. H.B. 1419, Status available at <http://www.gencourt.state.nh.us/ie/billstatus/billdetailpwr.asp> (last visited December 19, 2006).

260. H.B. 7203, 2006 Leg., Reg. Sess. (R.I. 2006), available at <http://www.rilin.state.ri.us/Billtext/BillText06/HouseText06/H7203.pdf> (last visited December 19, 2006).

261. *Id.*

262. *Id.*

263. *Id.*

ceded their powers as defined or limited in the collective bargaining agreement, or a finding that there was no valid submission or contract.²⁶⁴ The bill was introduced on February 9, 2006 by Representatives San Bento, Shanley, Lally, and Lewiss and referred to the House Labor Committee.²⁶⁵

H. Rhode Island House Bill 7805²⁶⁶

House Bill 7805 pertains to resolution of agreements reached on contracts between a municipal employer and the bargaining agent.²⁶⁷ If the municipal employer and bargaining agent do not reach an agreement in a certain number days, the current Rhode Island statute provides for compulsory mediation of these unresolved issues.²⁶⁸ However, the statute is silent on who pays the costs for this compulsory mediation.²⁶⁹ House Bill 7805 provides that the state shall pay the costs of the mediation expenses for any mediation for unresolved issues submitted to compulsory mediation.²⁷⁰ This bill is sponsored by Representative John J. McCauley and was introduced on February 28, 2006.²⁷¹ The bill was referred to House Finance and continued to next session.²⁷²

I. Utah Senate Bill 61²⁷³

Senate Bill 61 was introduced January 11, 2006.²⁷⁴ The purpose of the bill was to enact the Utah Uniform Mediation Act.²⁷⁵ The chief sponsor of the bill was Lyle W. Hillyard.²⁷⁶ After having been passed by the Senate, on February 14, 2006, the original bill was substituted by a substantially similar one which was proposed by Representative Lorie D. Fowlke.²⁷⁷ The substitute bill was passed by the legislature and was signed by Governor Jon Huntsman Jr. on March 10, 2006.²⁷⁸ In passing this bill, Utah became the eighth jurisdiction to adopt the Uniform Mediation Act (UMA).²⁷⁹ Additionally, Utah is the second jurisdiction to include the international portion of the UMA, which incorporates the United Na-

264. *Id.*

265. *Id.*

266. H.B. 7805, 2006 Leg., Reg. Sess. (R.I. 2006), available at <http://www.rilin.state.ri.us/Billtext/BillText06/HouseText06/H7805.pdf> (last visited December 19, 2006).

267. *Id.*

268. R.I. GEN. LAWS § 28-9.4-10 (2006).

269. *Id.*

270. H.B. 7805, 2006 Leg., Reg. Sess. (R.I. 2006).

271. *Id.*

272. *Id.*

273. S.B. 61, 57th Legis. Gen. Sess. (Utah 2006), available at <http://www.le.state.ut.us/~2006/bills/sbillint/sb0061s01.htm> (last visited December 19, 2006).

274. S.B. 61, Bill History, available at <http://www.le.state.ut.us/~2006/status/sbillsta/sb0061s01.htm> (last visited December 19, 2006).

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. Keith Seat, *Utah Enacts Uniform Mediation Act with International Provisions*, KEITH SEAT'S MEDIATION NEWS, available at <http://www.mediate.com/adnews/>.

tions Model Law on International Commercial Conciliation.²⁸⁰ The version adopted by Utah was similar to the uniform act, but added a provision which expressly requires mediators to serve in a neutral fashion.²⁸¹ The bill took effect on May 1, 2006.²⁸²

*J. West Virginia House Bill 4759*²⁸³

This bill was introduced to the West Virginia Legislature February 24, 2006.²⁸⁴ The bill seeks to amend the West Virginia Consumer Credit and Protection Act to prohibit the inclusion of mandatory arbitration clauses in loan agreements by regulated consumer lenders in the state.²⁸⁵ The bill provides that unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any terms or language requiring mandatory arbitration for disputes arising out of the consumer loan agreement.²⁸⁶ The mandatory arbitration clause will be void.²⁸⁷ The bill was sent to the House Judiciary Committee on the same day it was introduced in the House and has made no movement since.²⁸⁸ The sponsor of the bill is Delegate John N. Ellem.²⁸⁹

III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced during the first eleven months of 2006 concerning alternative dispute resolution.²⁹⁰

Alabama

Bills Enacted – none

Other Legislation – H.B. 420, S.B. 142 (provides that a mediator will not be compelled to testify or produce documents concerning mediation proceedings), H.B. 718 (adopts the modified Uniform Arbitration Act), H.B. 779 (provides for mediation of custody disputes).

280. *Id.*

281. *Id.*

282. UTAH CODE ANN. § 78-31c (2006).

283. H.B. 4759, 77th Legis., 2nd Sess. (W. Va. 2006), available at http://www.legis.state.wv.us/Bill_Text_HTML/2006_SESSIONS/RS/Bills/hb4759%20intr.htm (last visited December 19, 2006).

284. H.B. 4759, Bill History, available at http://www.legis.state.wv.us/bill_status/bills_history.cfm?year=2006&sessiontype=rs&btype=bill (last visited December 19, 2006).

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.* (information accurate as of December 1, 2006).

289. *Id.*

290. The bills were compiled by a search through the Lexis database, State Bill Tracking- Current Session, using the search terms "mediation or mediator or arbitration or arbitrator or alternative dispute resolution or ombudsman and STATE" with date restriction from 1/1/06 to 12/1/06. The search was last conducted on December 13, 2006.

Alaska

Bills Enacted – none

Other Legislation - S.B. 2004B/H.B. 2004B (amends the Revised Uniform Arbitration Act).

Arizona

Bills Enacted – S.B. 1374 (relates to arbitration of indemnity proceedings), S.B. 1407 (relates to the Office of Ombudsman-Citizens Aide providing for public access and confidentiality of certain information), S.B. 1486 (prohibits the Arizona Corporation Commission from adopting or administering any arbitration procedure to resolve disputes brought by a party against a wireless telecommunications company).

Other Legislation - H.B. 2517 (amends the Uniform Arbitration Act), S.B. 1100 (provides for an ombudsman office relating to homeowner's associations and condominiums), S.B. 1124 (codifies the Revised Uniform Arbitration Act).

Arkansas

Bills Enacted – none

Other Legislation – none

California

Bills Enacted - A.B. 1553 (provides that if an arbitration agreement requires that arbitration of a controversy be demanded or initiated within a certain time period, the commencement of a civil action within that period will toll the applicable time limits in the arbitration agreement), A.B. 2400 (provides the manner in which the reinsurance intermediary must comply with court or arbitration panel orders regarding production of documents or witnesses), A.B. 2482 (relates to legal representation in arbitration proceedings including procedures for out of state attorneys), A.B. 2683 (requires licensed architects to report to the Architects Board regarding any civil judgment, arbitration award, settlement, or administrative action against the licensee), A.B. 2853 (relates to the training of mediators in child custody disputes, requiring 16 hours of training in domestic violence), S.B. 1438 (relates to information concerning settlements, arbitration awards, and judgments in a malpractice action).

Other Legislation – A.B. 402 (enacts the Collaborative Family Law Act which enables parties to a dissolution or nullification of marriage to utilize collaborative law processes rather than adversarial judicial proceedings to resolve disputes), A.B. 1363 (creates the Conservatorship Ombudsman to collect and analyze data and complaints about conservators), A.B. 1584 (enacts the Excluded Employee Mediation Act allowing an excluded employee who has filed a grievance to request mediation of this grievance if certain conditions are met), A.B. 1598 (relates to the arbitration fees paid by the Respondent in agricultural disputes), A.B. 1870 (relates to motor vehicle inspection and authorizes a vehicle owner who disputes the failure of the test to seek resolution with the state referee), A.B. 2288 (enacts the Family Law Conflict Reduction Act of 2006 to reduce con-

flict among parties in family law court), A.B. 2565 (relates to the funding of special education mediation conferences and due process hearings), A.B. 2803 (requires direct mail solicitation notifying persons with claims relating to residential construction defects of alternatives to litigation and potential adverse consequences of litigation), A.B. 2980 (requires the Department of Fair Employment and Housing to maintain a mediation program), S.B. 1492 (established the Rapid Dispute Resolution Program to mediate disputes between insurer and insured of claims under automobile collision or physical damage coverage).

Colorado

Bills enacted – none

Other Legislation – H.B. 1168 (authorizes the creation of park mediation boards for mobile home parks).

Connecticut

Bills enacted – none

Other Legislation – H.B. 5216 (permits any person to act as an agent or representative for a party in an arbitration proceeding without having been admitted to practice law in this state), H.B. 5393 (relates to binding arbitration involving municipal employees), H.B. 5490 (relates to binding arbitration for school employees), H.B. 5497 (concerns the access to the long-term care ombudsman's program in long-term care settings), H.B. 5504 (establishes a state ombudsman to resolve complaints related to bullying in school environments to create a safe learning environment), H.B. 5575 (concerns the applicability of the Freedom of Information Act to certain arbitration proceedings), H.B. 5810 (establishes the Office of Property Rights Ombudsman to restrict the power of municipalities and development agencies to acquire property by eminent domain), S.B. 30 (establishes a mediation program to resolve termination of parental rights matters prior to court proceeding on the merits), S.B. 430 (requires that arbitrators of dissolution of marriage matters be attorneys admitted to practice in this state), S.B. 598 (adopts the Connecticut Uniform Mediation Act).

Delaware

Bills enacted – H. B. 454 (requires the parties to participate in mandatory mediation in disputes involving the enforcement of deed covenants or restrictions), H.B. 531 (creates the Delaware Manufactured Housing Alternative Dispute Resolution Act), S.B. 19 (provides an arbitration procedure for disputes from district school construction projects), S.B. 41 (provides that the Freedom of Information Act will not apply to meetings that involve conciliation or mediation in the Office of Human Relations).

Other Legislation – H.B. 394 (provides for the Office of State Ombudsman), H.B. 438 (creates low-cost arbitration procedure for health care providers to use to resolve payment disputes with insurance carriers), S.B. 53 (amends the Public Employment Relations Act to specify the mediation and binding arbitration process), S.B. 362 (reforms workers' compensation law and creates a dispute resolution process).

Florida

Bills enacted – H.B. 1583 (authorizes insurers to issue life insurance policies containing mandatory binding arbitration provisions and specifies requirements for these provisions), S.B. 1922 (relates to the state long-term care ombudsman program).

Other Legislation- H.B. 13 (relates to motor vehicle warranty enforcement and makes participation in RV Mediation and Arbitration Program discretionary), H.B. 1067 (relates to Long-Term Care Ombudsman Program), S.B. 1482/H.B.549 (authorizes court to refer actions to binding arbitration rather than non-binding arbitration for disputes involving mobile park tenancies), S.B. 2188/H.B. 7019 (provides standards of conduct for mediation), S.B. 2498 (relates to court-ordered non-binding arbitration), H.C.J. 1 (provides for standards of conduct during mediation, requires certain cases be referred to mediation and prohibits other cases from being referred to mediation).

Georgia

Bills Enacted – S.B. 115 (relates to binding arbitration of disputes in the Metropolitan Atlanta Rapid Transit Authority Act of 1965).

Other Legislation – H.B. 1243 (provides for dispute resolution of construction defects), S.B. 458 (relates to eminent domain, providing for non-binding arbitration of proposed takings under certain circumstances), S.B. 564 (amends the Georgia Arbitration Code to provide that an agreement of mandatory arbitration will contain certain notices).

Hawaii

Bills Enacted – H.B. 2898 (allows district courts jurisdiction over cases subject to arbitration agreements with \$10,000 or less amount in dispute unless the arbitration is subject to an existing law or the National Labor Relations Act), S.B. 2545 (relates to mediation of condominium management disputes).

Other Legislation – H.B. 2336, 2373 (relates to the Uniform Arbitration Act), H.B. 2406 (relates to interest arbitration), S.B. 2368 (relates to interest arbitration), S.B. 2578 (allows the district courts to have jurisdiction over cases subject to arbitration agreements where the disputed amount is \$ 10,000 or less), S.B. 2658 (requires medical facilities to develop a mediation model for handling serious medical errors), S.B. 3238 (requires the Department of Health to add topics of domestic violence, alternative dispute resolution, and divorce to informational brochures distributed to marriage license applicants).

Idaho

Bills Enacted – H.B. 567 (allows Senior Services Act to fund the ombudsman program), H.B. 634 (provides for the admissibility of fault in civil actions and in arbitration of civil actions).

Other Legislation – S.B. 1254 (adds an arbitration process for certain circumstances if a governmental entity's actions affect the value of real property), S.C.R

124 (requests the Department of Health and Welfare to develop an informal dispute resolution process).

Illinois

Bills Enacted – none

Other Legislation – H.B. 4967/ S.B. 2586 (expands the scope of arbitration under the Illinois Public Relations Act), H.B. 5310 (amends the Lobbyist Registration Act prohibiting a person required to be registered, their spouse or their immediate family members from serving as an arbitrator), S.B. 2194 (provides that disputes regarding highway construction projects with the Department of Transportation can be settled according to the American Arbitration Association's Construction Industry Arbitration Rules and that all parties are bound to the terms of the arbitration settlement).

Indiana

Bills Enacted – H.B. 1227 (provides an optional arbitration procedure for state employee grievances), H.B. 1279 (provides for arbitration of disputes involving electronic services providers).

Other Legislation – H.B. 1154 (relates to mediation involving dissolution of marriage, child custody or child support).

Iowa

Bills Enacted – none

Other Legislation – H.B. 2517 (provides arbitration for resolving disputes on horse racing agreements), S.B. 295 (concerns violation of a mediation agreement of a child ten years of age or older).

Kansas

Bills Enacted – none

Other Legislation – H.B. 2978 (provides for informal dispute resolution procedures regarding fire inspections), E.O. 17 (provides assistance with dispute resolution concerning the Geographic Information Systems Policy Board).

Kentucky

Bills Enacted – none

Other Legislation – H.B. 686 (relates to arbitration hearing procedures for wrongful discharge disputes), H.B. 721 (proposes amending the Constitution of Kentucky to require non-binding alternative dispute resolution for complaints involving health care providers), S.B. 240 (requires all claims of professional negligence against healthcare providers to be subject to mediation).

Louisiana

Bills Enacted – H.B. 265 (provides qualifications pertaining to education and training for mediators in child custody disputes), H.B. 266 (provides qualifications pertaining to education and training for mediators in juvenile court disputes), H.B. 1217 (enacts the International Commercial Arbitration Act), S.B. 206 (provides for the request for initial mediation of disputed workmen’s compensation claims).

Other Legislation – H.B. 98A (creates the Louisiana Housing Recovery Centers to advise citizens on insurance rights and mediation options), H.B. 444 (creates the Hurricane Victim’s Mediation Program), H.B. 864 (exempts mediators and hearing officers from provisions relative to professional, personal, and social services procurement), S.B. 22 (qualifies as mediators persons who served as city, parish, family, and juvenile judges), S.B. 35A (creates the Louisiana Housing Recovery Act), S.B. 514 (mandatory mediation for creditors of agriculture producers).

Maine

Bills Enacted – H.B. 1212 (provides that any extended service warranty sold in the State must include a clause providing that any arbitration regarding the warranty must occur at a location in the State).

Other Legislation – none

Maryland

Bills Enacted – H.B. 239 (requires the Secretary of Health and Mental Hygiene to designate an agricultural ombudsman), H.B. 396 (requires a court to refer a complaint from a person filing a nuisance action against an agricultural operation to the state agricultural mediation program), S.B. 348 (relates to mediation of labor disputes of the State Labor Relations Board), S.B. 420 (repeals prohibitions against specified decisions by the law enforcement hearing board the subject of binding arbitration).

Other Legislation – H.B. 518 (establishes an Ombudsman Program in the Department of the Environment).

Massachusetts

Bills Enacted – none

Other Legislation – H.B. 19 (makes uniform aspects of mediation regarding privileged communication), H.B. 155 (relates to dispute resolution for emergency medical technicians), H.B. 386 (provides for binding arbitration in public employee disputes), H.B. 408 (provides for a hearing before the American Arbitration Association in prohibited practice charge cases involving public employees), H.B. 1567 (relates to arbitration with insurance companies for property damages to motor vehicles), H.B. 3747 (related to alternative dispute resolution program in actions to recover possession of premise and summary process actions), S.B. 342 (relates to arbitration hearings in teachers’ dismissals), S.B. 366, 1733 (promotes alternative dispute resolution for students), S.B. 1514 (relates to interest arbitration for health care professionals), S.B. 1608/H.B. 167 (provides for binding arbitration for health care professionals), S.B. 1608/H.B. 167 (provides for binding arbitration for health care professionals).

tration for firefighters and police officers), S.B. 2459 (relates to binding arbitration).

Michigan

Bills Enacted – none

Other Legislation – H.B. 5916 (revises dispute resolution process under Acquirer Protection and Dispute Resolution Act), H.B. 6168 (provides for mediation in regard to property tax issues before the tax tribunal), S.B. 690 (creates the Clean Air Ombudsman).

Minnesota

Bills Enacted – H.B. 2998 (provides that certain provisions on arbitration for firefighters do not expire).

Other Legislation – H.B. 3239 (requires mediation when major budget bills have not been enacted), H.B. 3875 (encourages the settlement of grievances and offers of settlement prior to arbitration and provides for the assessment of costs against a party refusing an offer of settlement that is more favorable to the offeree than the final arbitration award), S.B. 3413/H.B. 3663 (provides an action against the license of a building contractor for failure to pay an arbitration award or a court judgment related to the work).

Mississippi

Bills Enacted – S.B. 2381/H.B. 1154 (authorizes alternative dispute resolution procedures and establishes a non-binding alternative dispute resolution procedure for personal lines insurance claims).

Other Legislation – H.B. 276 (requires physicians to report settlement and arbitration awards required by the Medical Practice Disclosure Act), H.B. 931 (requires pursuit of mediation in all civil litigation), S.B. 2117 (requires dispute resolution mechanisms for healthcare insurance providers).

Missouri

Bills Enacted – none

Other Legislation – H.B. 2043 (allows court to order alternative dispute resolution), S.B. 1116 (relates to dispute resolution).

Montana

Bills Enacted – none

Other Legislation – Mt. D. 387 (relates to increasing the lemon law arbitration award), Mt. D. 1808 (relates to mediation for criminal proceedings), Mt. D. 1597 (creates a workplace conflict resolution program).

Nebraska

Bills Enacted – none

Other Legislation – L.B. 934 (provides for mediation of fee disputes), L.B. 1243 (provides for arbitration of disputes involving school districts).

Nevada

Bills Enacted – none

Other Legislation – B.D.R. 227 (enacts the Domestic Relations Dispute Resolution Act).

New Hampshire

Bills Enacted – H.B. 1419 (permits the court to order mediation in divorce proceedings if either party requests mediation or at the court's discretion), H.B. 1654 (makes permanent the probate court mediation fund and fee).

Other Legislation – H.B. 316 (permits the court to order the parents in a child custody case to participate in a neutral evaluation to resolve the case without litigation), H.B. 648 (requires mandatory mediation in medical injury actions), H.B. 1545 (requires a juvenile to participate in mediation as part of a diversion program ordered by the court), L.S.R. 262 (establishes within the judicial branch an office of mediation/ arbitration), L.S.R. 612 (authorizes teachers to negotiate binding arbitration as part of a collective bargaining agreement), L.S.R. 807 (relates to the rights of workers to form unions and requirements for arbitration and mediation), L.S.R. 2154 (relates to mandatory mediation in divorce proceedings).

New Jersey

Bills Enacted – A.B. 4162 (provides for a legal presumption in favor of arbitration when interpreting a provision of a public employment collective negotiation agreement), S.B. 2383 (removes provision regarding appeals as a matter of right in The New Jersey Alternative Procedure for Dispute Resolution Act), S.B. 2824 (provides for arbitration to resolve claim disputes between health care insurers and health care providers).

Other Legislation – A.B. 265 (establishes a process for resolution of health and dental claim disputes), A.B. 475 (establishes Community Dispute Resolution Commission to facilitate community association dispute resolution), A.B. 477 (establishes alternative dispute resolutions procedures for homeowners' associations), A.B. 1818 (creates the victim-juvenile offender mediation program), A.B. 2088 (requires the Department of Environmental Protection to compensate certain property owners for certain costs incurred in property dispute resolution), A.B. 3187 (establishes emergent relief application standards for injured parties in Personal Injury Protection arbitrations), A.B. 3471 (concerns arbitration provisions in consumer contracts), S.B. 686 (requires binding arbitration in contract disputes between hospitals and health insurance carriers), S.B. 1002 (concerns grievance arbitration clauses in public employment collective negotiation agreements), S.B. 2119/A.B. 2753 (concerns arbitration for certain non-teaching school staff), A.B. 3165 (requires binding arbitration for certain matters relating to dismissals or reductions in salary of tenured persons employed in a teaching capacity).

New Mexico

Bills Enacted – none

Other Legislation - none

New York

Bills Enacted – S.B. 7347 (provides for binding arbitration in negotiations involving members of collective bargaining units designated as security supervisors and agency law enforcement services who are forest rangers and forest ranger captains), S.B. 8168 (implements an interest arbitration award relating to collective negotiation units consisting of investigators in the division of state police), S.B. 8474 (implements an interest arbitration award relating to collective negotiation units involving certain members of agency law enforcement service units who are police officers).

Other Legislation – A.B. 145 (repeals provision of the Civil Service Law relating to binding arbitration for state correctional officers), A.B. 2135 (enacts the Investment Banking and Research Reform Act which regulations arbitration), A.B. 6517 (makes permanent the provisions of law establishing dispute resolution during collective negotiations), A.B. 7110 (establishes public arbitration panels for Triborough bridge and tunnel authority), A.B. 8123 (provides that agreements between a public employer and an employee organization shall contain provisions relating to disciplinary arbitration procedures), A.B. 9217 (creates the land use mediation program and the court alternative dispute resolution service), A.B. 10156 (provides for the use of binding arbitration for court clerks or uniformed court officers of the unified court system), A.B. 10588 (establishes arbitration of disputes involving the operation of a retail service station by crude oil refiner), A.B. 12061 (provides procedures for hearings and arbitration on charges relating to appointment of school superintendents), S.B. 1399 (enacts the Child Custody Reform Act to provide uniform statewide standards for litigation and mediation of child custody disputes), S.B. 1527 (enacts the Uniform Mediation Act), S.B. 2749 (authorizes municipal legislative bodies to enact local laws and ordinances providing for mediation of land use decisions), S.B. 6716 (provides for binding arbitration of disputed terms during negotiations between racetracks having video lottery gaming and horsemen's associations), S.B. 6755/A.B. 10545 (requires mandatory arbitration of no-fault motor vehicle insurance claims), S.B. 7033/A.B. 10880 (provides that the award or decision of an arbitrator or master arbitrator rendered in a no-fault arbitration involving a serious personal injury action will not constitute a collateral estoppel of the issues arbitrated), S.B. 7440 (provides that agreements between a public employer and an employee shall contain provisions relating to disciplinary grievance- arbitration procedures).

North Carolina

Bills Enacted – H.B. 1848 (establishes a permanency mediation program), H.B. 1908 (revises special education laws to include a mediation program), S.B. 277 (provides for a voluntary mediation program for residential property insurance claims caused by disasters).

Other Legislation – none

North Dakota

Bills Enacted – none

Other Legislation - none

Ohio

Bills Enacted – none

Other Legislation – S.B. 88 (establishes a pilot program mandating arbitration for claims of medical negligence prior to the filing of a complaint).

Oklahoma

Bills Enacted – H.B. 2685 (provides for dispute resolution in Interstate Insurance Product Regulation Compact).

Other Legislation - none

Oregon

Bills Enacted – none

Other Legislation – Ballot Measure 9 (allows the owner of the property in a condemnation action to bring the offer to arbitration).

Pennsylvania

Bills Enacted – H.B. 750 (provides for compulsory arbitrations in judicial matters which involve title to real property or where the amount in controversy exceeds a specified amount).

Other Legislation – H.B. 2548 (provides for mediation and arbitration under Procurement Code), H.B. 2554 (provides for dispute resolution for disputes involving the use of credit card information), H.B. 2635 (provides for collective bargaining dispute resolution), S.R. 160 (Directs the Joint State Government Commission to establish a bipartisan task force with an advisory committee to conduct a comprehensive review of the current status of alternative dispute resolution (ADR) services).

Rhode Island

Bills Enacted – none

Other Legislation – H.B. 6762 (outlines the rights of teachers' unions and school committees in mediation, conciliation, and arbitration during contract negotiations), H.B. 6863 (removes the \$ 5,000 cap on the payment of mediation expenses by the state pertaining to compulsory mediation between the negotiating or bargaining agent and the school committee), H.B. 7084 (provides that an arbitration award cannot be vacated or remanded based on conflict with the director of the department of corrections), H.B. 7131 (provides a procedure for arbitration of unresolved issues involved in appropriations for schools), H.B. 7203 (establishes arbitration as the preferred alternative dispute resolution mechanism), H.B. 7515 (makes changes to the arbitrations of municipal employee law), H.B. 7593

(amends the definition of a "municipal employee" for purpose of municipal employees' arbitration), S.B. 2335 (redefines the structure for purposes of dispute resolution under the State Building Code), S.B. 2633 (establishes a Rhode Island public policy that arbitration be the preferred alternative dispute resolution mechanism), S.B. 2664 (provides for the payment of certain costs pertaining to compulsory mediation), S.B. 2665/H.B. 7805 (requires the State to pay costs of compulsory mediation involving municipal employees), S.B. 2666 (provides that the state will pay the costs of compulsory mediation for school teachers), S.B. 2672 (provides for arbitration regarding the establishment of uniform auto collision repair labor rates), S.B. 2775 (provides certain factors to be considered by the arbitration board in resolving contract negotiations involving municipal employees), S.B. 2816/H.B. 7008 (submits that claims between bargaining agents and school committees that are not resolved in mediation within 365 days to binding arbitration).

South Carolina

Bills Enacted – H.B. 3355 (enacts the Dairy Stabilization Act which provides for mediation and arbitration of milk disputes).

Other Legislation – H.B. 3381 (enacts the Landowner and Advertising Protection and Property Valuation Act, providing for arbitration when parties fail to reach agreement regarding off-premises outdoor advertising), S.B. 1057 (relates to mediation and arbitration before a medical malpractice action is brought to trial), S.B. 1298 (relates to court annexed alternative dispute resolution rules), S.B. 1319 (provides for mediation to settle post divorce disputes).

South Dakota

Bills Enacted – none

Other Legislation – H.B. 1152 (provides that a contractual mediation clause must be honored before any damage claim, including an arbitration for damages, can be brought against a construction professional), H.B. 1210 (an act to adopt the revised Uniform Arbitration Act and to repeal certain provisions regarding arbitration).

Tennessee

Bills Enacted – none

Other Legislation – S.B. 3052 (provides for procedures for dispute resolution by final and binding arbitration in negotiated agreements for education employees), S.B. 3129/H.B. 3505 (requires any arbitration between transportation system employers and employees to be conducted in accordance with rules of the American Arbitration Association and state law), S.B. 3517/H.B. 2946 (rewrites various provisions of the Uniform Arbitration Act), S.B. 3673/H.B. 3946 (requires mediations to be available to each department of state government for claims filed against the state).

Texas

Bills Enacted – none

Other Legislation – H.B. 151C (relates to binding arbitration of certain appraisal review board orders).

Utah

Bills Enacted – S.B. 61 (enacts the Utah Uniform Mediation Act), S.B. 224 (modifies the Insurance Code, amending the provisions relating to arbitration for uninsured and underinsured motorist coverage claims).

Other Legislation – H.B. 398 (requires that parents participate in dispute resolution proceedings for modification or termination of joint custody orders).

Vermont

Bills Enacted – H.B. 33 (adopts the Uniform Mediation Act), S.B. 292 (amends the State Employee Labor Relations Act relating to the admission of evidence in negotiations and mediation proceedings).

Other Legislation – H.B. 571 (makes an arbitrator's decision appealable under workmen's compensation law).

Virginia

Bills Enacted – H.B. 439 (relates to arbitration and condemnation of sewage facilities), H.B. 631 (provides for mandatory dispute resolution evaluation session in condemnation cases).

Other Legislation - none

Washington

Bills Enacted – none

Other Legislation – H.B. 2179 (provides for the use of arbitration to resolve disputes between electrical suppliers regarding electrical service to customers), H.B. 2460 (interest arbitration provisions of public employees' collective bargaining act apply to certain employees of the juvenile detention facilities), H.B. 3226 (provides for resident participation in the informal dispute resolution processes relating to boarding homes), H.B. 3239 (provides for arbitration to resolve disputes regarding underinsured motor vehicle insurance policies), S.B. 6202 (requires arbitration of homeowners' association disputes), S.B. 6809 (provides that a nursing home or long term care facility has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed during a licensing inspection or complaint investigation), S.B. 6813 (authorizes binding arbitration for juvenile corrections employees).

West Virginia

Bills Enacted – H.B. 2329 (authorizes a court to order a defendant to contribute monetarily or through juvenile mediation program), S.B. 170 (establishes the

State Health Information Network, providing for immunity for liability and dispute resolution).

Other Legislation – H.B. 2258 (relates to the Uniform Arbitration Act), H.B. 2293 (revises mediation procedures and authorizes arbitration for education and public employee grievance procedures), H.B. 4028 (provides for liens on child support obligors proceeds from arbitration and other dispute resolution awards), H.B. 4634/ H.B. 4750 (provides for binding arbitration in state employee grievance procedures), H.B. 4759 (prohibits mandatory arbitration clauses in consumer loan agreements by regulated consumer lenders in the state).

Wisconsin

Bills Enacted – A.B. 41 (provides for public hearing and dispute resolution under the Interstate Compact for Juveniles).

Other Legislation – A.B. 518 (relates to factors considered in rendering a collective bargaining arbitration decision under the Municipal Employment Relations Act), S.B. 460 (relates to municipal boundary agreements and the use of alternative dispute resolutions in municipal boundary disputes).

Wyoming

Bills Enacted – none

Other Legislation - none