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## State Legislative Update

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# State Legislative Update\*

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## I. STATE LEGISLATIVE FOCUS

### *A. Binding Arbitration Required for Municipalities in Kansas*

Bill Number:	Kansas House Bill 2631
Summary:	This bill would offer any individual with a contract or tort claim against a municipality to initiate binding arbitration proceedings against the municipality as an alternative to filing a lawsuit.
Status:	Left pending in Kansas House Elections and Governmental Organization Committee as of Feb. 7, 2008.

#### *1. Introduction*

The purpose of this Bill is to provide an alternative approach for individuals with a cause of action against a municipality.<sup>1</sup> Rather than the costly and time-consuming traditional method of hiring an attorney and filing a lawsuit, House Bill 2631 offers individuals an opportunity for Alternative Dispute Resolution (“ADR”) in the form of arbitration.<sup>2</sup> The Bill would allow any individual with a claim in contract or tort against a municipality to require the municipality to submit to the arbitration of the claim.<sup>3</sup>

The purpose of House Bill 2631 is to facilitate the resolution of individual claims against a city.<sup>4</sup> However, a fundamental principle of arbitration is that it is a matter of contract, and no party should be forced into the arbitration of a claim which they have not agreed to arbitrate.<sup>5</sup>

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

1. H.R. 2631, 82d Leg., Reg. Sess. (Kan. 2008).

2. *Id.*

3. *Id.*

4. *Id.*

5. MARTIN DOMKE, DOMKE ON COMMERCIAL ARBITRATION 5, 31 (1983).

## 2. The Bill

This Bill would allow individuals to seek arbitration of contract and tort claims against a municipality.<sup>6</sup> The exact wording of the Bill states that individuals “may *require* the municipality submit to arbitration of such claim.”<sup>7</sup> With this wording, the Bill seems to imply that a municipality may be forced into arbitration without an arbitration agreement.<sup>8</sup>

However, the remainder of the Bill sets out the details of a potential arbitration proceeding, and the language closely resembles that of the American Arbitration Association’s (“AAA”) standard arbitration clause.<sup>9</sup>

The Bill requires arbitration according to the rules of the AAA with the appointment of a mutually acceptable arbitrator.<sup>10</sup> If a single acceptable arbitrator cannot be found, the Bill calls for the typical process—each party appointing one arbitrator and the two individual arbitrators choosing a third arbitrator.<sup>11</sup>

Additionally, the Bill requires arbitration to take place at a central or mutually agreeable location, and requires that all relevant documents and materials be made available to the other party no more than thirty days after notice of arbitration is served.<sup>12</sup>

The Bill provides that an arbitrator may order a municipality to pay compensation or damages to an individual, but does not permit the award of punitive damages.<sup>13</sup> The Bill also gives the arbitrator the authority to issue mandatory orders and restraining orders.<sup>14</sup> In its conclusion, the Bill states that all arbitration awards are final and binding and all arbitration costs are to be paid solely by the municipality involved.<sup>15</sup>

The author and supporter of House Bill 2631, State Representative Anthony Brown, suggested an amendment to the Bill during a committee meeting of the House Elections and Governmental Organization Committee on Feb. 7, 2008.<sup>16</sup> The proposed amendment would require individuals seeking arbitration to submit a written explanation of their claim and formally request arbitration within one year of the event creating the cause of action.<sup>17</sup>

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6. H.R. 2631, *supra* note 1.

7. *Id.* (emphasis added).

8. *Id.*

9. American Arbitration Association, *Commercial Arbitration Rules and Mediation*, <http://www.adr.org/sp.asp?id=22440> (last visited Nov. 22, 2008).

10. H.R. 2631, *supra* note 1.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. MINUTES OF THE H. ELECTIONS & GOV'T ORG. COMM 82d Leg. (Kan. Feb. 7, 2008); <http://www.kslegislature.org/committeeminutes/07-08/house/index.shtml> (follow “House Elections and Governmental Organization” hyperlink; then follow “2-07-2008” hyperlink).

17. *Id.*

### 3. Support and Opposition

In support of House Bill 2631, Representative Brown exemplified the limitations for individuals who face conflict with municipalities.<sup>18</sup> Brown used Viola Brown, a Kansas resident who owns a small farm, as an example of someone who might benefit from implementation of the Bill.<sup>19</sup> The city of Eudora, where Viola lives, is expanding rapidly; as a result of the expansion, increased water flows through a creek on Viola's property.<sup>20</sup> Along with the water, trash and debris wash up on her property.<sup>21</sup> Brown highlights the fact that Viola's only option is to take on the daunting task of suing the city.<sup>22</sup> With the passage of House Bill 2631, she would have the option of entering arbitration against the city, a potentially quicker and more efficient process than trial.<sup>23</sup>

At the same committee meeting on Feb. 7, several conferees spoke in opposition to the Bill.<sup>24</sup> The first objection to the Bill was that it would prevent judicial review of an arbitrator's decision and would give arbitrators too much power by allowing them to issue mandatory orders and restraining orders.<sup>25</sup> Another serious concern about the Bill is that it would allow anyone with a claim to choose arbitration and force the city to pay for such arbitration.<sup>26</sup> Opponents fear this will lead to filing of frivolous claims and waste tax dollars.<sup>27</sup>

Eric Sartorius, assistant city manager and director of external affairs for Overland Park, Kansas, noted that nothing in current law prevents two parties from agreeing, of their own volition, to enter into arbitration to settle their disputes.<sup>28</sup> He said he believed that House Bill 2631 would "needlessly increase the cost of government" by forcing the city to accept responsibility for all costs associated with an arbitration proceeding.<sup>29</sup>

Finally, in a letter to the Chairperson of the House Committee on Elections and Governmental Organization, Duane A. Goossen, director of the Kansas Division of Budget stated that the Bill "would affect the cities of Kansas by requiring them to pay the full costs of arbitration, regardless of the outcome of the matter or the validity of the claim."<sup>30</sup>

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18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*; see also *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) ("[T]wo goals of the Arbitration Act [are] enforcement of private agreements and encouragement of efficient and speedy dispute resolution").

24. *Id.*

25. MINUTES OF THE H. ELECTIONS & GOV'T ORG. COMM., *supra* note 16.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Letter from Duane A. Goossen, Dir., Kan. Div. of the Budget, to Mike Burgess, Chairperson, House Comm. on Elections & Gov't Org. (Feb. 5, 2008) (on file with Kansas Legislature).

#### 4. Conclusion

House Bill 2631 is an attempt to streamline the dispute resolution process between individuals and municipalities.<sup>31</sup> However, there are several fundamental flaws in the proposed Bill as written.

It appears from the language of the Bill that it offers individuals the opportunity to *force* a municipality to arbitrate a claim.<sup>32</sup> Because of the consensual nature of arbitration, the language in the Bill may need to be altered so individuals have the opportunity to seek arbitration, but cannot *require* a municipality to arbitrate a claim.<sup>33</sup>

Additionally, it is unlikely that this Bill will become law as it is currently written because of the strong opposition to its requirement that municipalities pay all the costs of arbitration.<sup>34</sup> According to the AAA's Commercial Arbitration Rules, each party should bear the cost of arbitration equally.<sup>35</sup> House Bill 2631 states that arbitrations between individuals and municipalities should proceed according to the rules of the AAA.<sup>36</sup> Therefore, if the Bill simply followed those rules, the controversy over shifting costs would be eliminated.

#### B. Required Mediation of Tort Disputes in Mississippi

Bill Number:	Mississippi House Bill 326
Summary:	This Bill would require the submission of all tort disputes to mandatory mediation before any civil suit may be filed. The Bill also provides that the statute of limitations period shall be suspended upon notice of a tort claim until mediation proceedings have ended.
Status:	Died in committee on Feb. 19, 2008.

#### 1. Introduction

Mississippi House Bill 326 had lofty goals. It took a headstrong approach to promote dispute resolution methods as alternatives to trial.<sup>37</sup> However, the Bill's attempt to force mediation prior to the filing of tort suits ignored the already satisfactory Mississippi Court Annexed Mediation Rules and threatened to upset the known and accepted legal process in Mississippi.<sup>38</sup> The flawed nature of this Bill led to its death in committee on Feb. 19, 2008.<sup>39</sup>

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31. H.R. 2631, *supra* note 1.

32. *Id.*

33. DOMKE, *supra* note 5.

34. H.R. 2631, *supra* note 1.

35. American Arbitration Association, *Commercial Arbitration Rules and Mediation*, <http://www.adr.org/sp.asp?id=22440> (last visited Nov. 22, 2008).

36. H.R. 2631, *supra* note 1.

37. H.R. 326, 123d Leg., Reg. Sess. (Miss. 2008).

38. *Id.* CT. ANNEXED MEDIATION RULES FOR CIVIL LITIG. (Miss. 2002), [http://www.mssc.state.ms.us/rules/msrulesofcourt/court\\_annexed\\_mediation.pdf](http://www.mssc.state.ms.us/rules/msrulesofcourt/court_annexed_mediation.pdf) (last visited Aug. 29, 2008).

39. H.R. 326, *supra* note 37.

## 2. The Bill

The Bill had four major components divided into two sections.<sup>40</sup> The first component concerned the required mediation itself and the qualifications of mediators.<sup>41</sup> The Bill began by clearly stating its intent for all parties to a tort dispute to submit to mandatory mediation before any civil suit may be filed.<sup>42</sup> Then, the Bill stated that mediators must be members of and certified by the Mississippi Bar and must have actively practiced law for a minimum of five years in order to hear disputes.<sup>43</sup> These qualifications are not mentioned in the Court Annexed Mediation Rules.<sup>44</sup>

The next component of the Bill involved the practical ramifications of required mediation and addressed how the statutes of limitations would be affected by such a requirement.<sup>45</sup> Obviously, if tort claims are required to be mediated before a civil suit can take place, time will pass between the development of the cause of action and the appropriate time for trial. This will undoubtedly affect any statute of limitations already in effect. Rather than proposing a change or extension of any current statute of limitations, the Bill proposed a suspension of any applicable statute of limitations until mediation proceedings had been completed.<sup>46</sup>

The third component of the Bill discussed the basic requirements of the mediation process, including when suit may be filed after mediation and notice requirements.<sup>47</sup> The Bill stated that mediation should be informal, relaxed, and non-binding unless the parties agreed otherwise.<sup>48</sup> The Bill also stated that a civil action could not be filed until ninety days after the mediation process was complete, and the Bill listed all the information that must be included in every notice of claim.<sup>49</sup>

Finally, the fourth component of the Bill was a statement of construction and purpose. The Bill was to be construed liberally and not to be seen as usurping the power of the courts to render awards.<sup>50</sup>

## 3. Support and Opposition

The clearly stated purpose of House Bill 326 was, “the encouragement of the settlement of disputes and the prevention of litigation.”<sup>51</sup> The dispute resolution process is meant to be consensual, and forcing people to participate in mediation may prevent some litigation, but at a large social and economic cost. A large cost

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40. *Id.*

41. *Id.*

42. *Id.* (“Before any civil suit involving a tort may be filed, the dispute must be submitted for mediation.”).

43. *Id.*

44. CT. ANNEXED MEDIATION RULES FOR CIVIL LITIG., *supra* note 38.

45. H.R. 326, *supra* note 37.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

in that forced mediation would greatly increase the number of mediation proceedings, but the Bill did not address a method for payment of the costs associated with all the additional mediation proceedings. Parties could be dissuaded by the cost and effort of mediation and therefore not attempt to bring their claim at all. However, this would not dissuade all claims and those who proceeded with their claims would still face added costs. Additionally, forcing people to participate in mediation would mean that they might not take the process seriously. They may rush through the process, viewing it as a burdensome obstacle before they can have their day in court. Finally, the proposed method of suspending any pertinent statutes of limitations may seem to work conceptually, but could lead to increased litigation about statutes of limitations issues and upset the balance of the law.

The Bill had a solid and honorable purpose of encouraging the use of dispute resolution. One positive portion of the Bill worthy of support was the mediator qualifications outlined early in the Bill.<sup>52</sup> These qualifications would increase fairness and balance in the mediation process, as well as lead to a wider public acceptance of the process.

#### 4. Conclusion

The mediation process is widely available in the state of Mississippi. According to the Court Annexed Mediation Rules, a court may order parties to enter into mediation proceedings, and the parties themselves may opt to participate consensually in the mediation process.<sup>53</sup> It appears that House Bill 326 was an attempt to fix what was not already broken. Forced mediation leads to increased costs, less credibility, and reduced respect for the process of mediation. Additionally, the Bill's effect on the statutes of limitations would have been overwhelming. House Bill 326 attempted to disrupt too much of the established legal practices, and for the aforementioned reasons it failed.

#### *C. Using Alternative Dispute Resolution Procedures to Aid in Repairing the Foreclosure Crisis: Michigan House Bill 6236<sup>54</sup>, Mississippi House Bill 743,<sup>55</sup> New York Senate Bill 8143,<sup>56</sup> Florida House Bill 979<sup>57</sup>*

Bill Numbers:	Michigan House Bill 6236, Mississippi House Bill 743, New York Senate Bill 8143, Florida House Bill 979
Summary:	These bills apply various dispute resolution methods to foreclosure disputes regarding home mortgages.
Status:	Michigan (in Committee on Banking and Financial Services); Mississippi (died in Committee on February 19, 2008); New York (signed by Governor on August 5,

52. *Id.*

53. CT. ANNEXED MEDIATION RULES FOR CIVIL LITIG., *supra* note 38.

54. H.R. 6236, 94th General Assem., Reg. Sess. (Mich. 2007).

55. H.R. 743, 123d Leg., Reg. Sess. (Miss. 2008).

56. S. 8143, 231st Ann. Leg., Reg. Sess. (N.Y. 2007).

57. H.R. 979, 110th General Assem., Reg. Sess. (Fla. 2008).

2008); Florida (died in House Committee on May 2, 2008).

### 1. Introduction

Since 2005, mortgage delinquencies and foreclosures have increased dramatically, particularly among high-risk, high-cost, and subprime mortgages.<sup>58</sup> Approximately 1.5 million foreclosures were instituted in 2007 alone.<sup>59</sup> This foreclosure crisis has led state legislatures to note, “[a]busive mortgage lending has become an increasing problem . . . exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years.”<sup>60</sup>

In addition to an increase of homes in foreclosure, the crisis has also caused home values to decline. As home prices plummeted, local and state tax collections which generate a substantial amount of revenue and income through property taxes, have also felt the economic crunch.<sup>61</sup> In addition, the economic woes created by the failing housing market have now reached national and global magnitudes. “The roots of the current [economic] crisis can be traced to lax lending for home mortgages — especially subprime loans given to borrowers with tarnished credit — during the housing boom.”<sup>62</sup> Economists hypothesize that when lenders approved subprime mortgages they were counting on home values to increase.<sup>63</sup> When this did not occur, foreclosures drastically increased as homeowners held mortgages larger than the value of their home.<sup>64</sup> “As financial companies racked up multibillion-dollar losses on soured mortgage investments, and credit problems spread globally, firms hoarded cash and clamped down on lending. This crimped consumer and business spending, dragging down the national economy — a vicious cycle policymakers have been trying to break.”<sup>65</sup>

Homeowners and consumers looked to local and federal governments both for assistance. Unfortunately, “[t]here is no simple solution to this unprecedented set of circumstances. Congress, the administration, state and local governments all have attempted to respond through a myriad of proposals, programs and agreements.”<sup>66</sup> While Congress and the Federal Reserve focus on the national economy, the recent subprime mortgage and foreclosure crisis has led many state legislatures to re-examine their current laws and legislation on the topic. In the

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58. Benjamin S. Bernanke, Chairman, Fed. Reserve, Remarks at the Independent Community Bankers of America Annual Convention: Reducing Preventable Mortgage Foreclosures (March 4, 2008); available at <http://www.federalreserve.gov/newsevents/speech/bernanke20080304a.htm>.

59. *Id.* “The Mortgage Bankers Association recently reported that of the 44 million active mortgages throughout the country, approximately 342,000 entered into foreclosure during the third quarter of 2007, the highest rate of foreclosures in more than 35 years.” Stuart T. Rossman, *The Foreclosure Crisis: Can Impact Litigation Provide a Response*, in CONSUMER FINANCIAL SERVICES LITIGATION INSTITUTE, at 197 (Practicing Law Institute 2008).

60. H.R. 743, *supra* note 55.

61. Lori Montgomery, *39 Republicans Join Democrats as Mortgage Bill Passes House*, WASHINGTON POST, May 9, 2008, at A1.

62. Associated Press, *Government Plans Bold Financial Rescue*, Sept. 19, 2008, at <http://www.msnbc.msn.com/id/26787984/> (last visited Nov. 22, 2008).

63. *Id.*

64. *Id.*

65. *Id.*

66. Rossman, *supra* note 59, at 197.



process, some states have introduced legislation responding to the crisis. Several of these legislative solutions incorporate ADR procedures to alleviate the financial hardships on consumers.

These bills adopt a variety of solutions including mediation programs, repealing mandatory arbitration provisions in subprime mortgages, and instituting mandatory settlement conferences as a part of the foreclosure process.

## *2. Instituting a Ninety-Day Mediation Program to Provide Alternative Solutions to Foreclosure: Michigan House Bill 6236*

Michigan House Bill 6236 was introduced by Representative Bettie Scott on June 12, 2008.<sup>67</sup> The Bill proposed to amend the Revised Judicature Act of 1961<sup>68</sup> by lengthening foreclosure proceedings for consumers and homeowners.<sup>69</sup> The Bill would create a ninety-day mediation program in conjunction with a one-year moratorium for mortgage foreclosures.<sup>70</sup>

The ninety-day mediation program consists of a variety of steps. First, a mortgage lender can only send notice of foreclosure sixty days after a borrower becomes delinquent on payment.<sup>71</sup> Following receipt of notice of foreclosure, the borrower has thirty days to attempt to resolve the delinquency by restructuring the loan payment schedule or meeting with a credit-counseling agency to formulate a solution to the delinquency. If the borrower chooses to do neither of these options, the action for foreclosure can proceed thirty-three days after notice was given.<sup>72</sup>

Subsection (6) of the act would retroactively apply the Bill's provisions to foreclosures on residential property filed before the effective date of the act.<sup>73</sup> Subsection (6) would not apply if the property has already been sold for judgment.<sup>74</sup>

The Bill places limits on the application of the procedure. Notice of foreclosure is not required if: (1) the borrower is more than twenty-four consecutive months in arrears; (2) the total amount due under the mortgage is more than \$60,000; or (3) if the borrower has already received notice from another lender regarding the foreclosure of the property.<sup>75</sup>

The Bill also instates a one-year moratorium on home foreclosures. The moratorium would begin on the Bill's effective date and would also retroactively apply to borrowers who have received notice of the foreclosure, but whose property has not yet sold.<sup>76</sup>

Following introduction, the Bill was transferred to the Committee on Banking and Financial Services on June 12, 2008, where it remains.

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67. H.R. 6236, *supra* note 54.

68. MICH. COMP. LAWS §§ 600.3115, 600.2304, 600.3236 (2000).

69. H.R. 6236, *supra* note 54.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

### 3. Refusing Mandatory Arbitration Provisions in High-Cost Home Loans: Mississippi House Bill 743

Representative Warren McBride introduced Mississippi House Bill 743, entitled the Home Loan Protection Act, on February 4, 2008.<sup>77</sup> The Bill was promptly transferred to the Committee on Banking and Financial Services. The Bill was directed at “high-cost” home loans that have led to the current mortgage foreclosure crisis.<sup>78</sup> The legislature focused on this type of loan because “[t]he financing of high points and fees causes the loss of precious equity in each refinancing and often leads to foreclosure.”<sup>79</sup>

The act would have broadly restricted several aspects of the mortgage foreclosure process, including the ability of creditors to accelerate indebtedness; the amount of fees that can be assessed when homeowners pay off their mortgage balance early; and the application of “balloon” payments.<sup>80</sup>

The act also would have restricted the application of arbitration clauses in such loans.<sup>81</sup> Subsection (10) of the act specified: “No high-cost home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process for any or all claims and defenses the borrower may have . . . .”<sup>82</sup> In summation, the act would have provided that violations of its provisions “constitutes an unfair or deceptive trade practice.”<sup>83</sup> The Bill died in committee on Feb. 19, 2008.

### 4. Mandatory Settlement Conferences to Generate Alternatives to Foreclosure: New York Senate Bill 8143

New York Senate Bill 8143, entitled The Real Property Actions and Proceedings Law, was signed into law on Aug. 5, 2008. The Bill was originally introduced on May 2, 2008.

The language of New York’s law is very similar to that of the proposed Michigan bill with relation to the ninety-day mediation program. New York’s bill, like the Michigan bill, allows the delinquent borrower at least ninety days to meet with a credit-counseling agency to discuss alternatives including lower monthly payments, or an altered payment schedule.<sup>84</sup>

New York’s bill differs from Michigan’s bill, however, in that Rule 3408 of New York’s bill also provides for a mandatory settlement conference in all residential foreclosure actions involving high-cost home loans, subprime, or nontradi-

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77. H.R. 743, *supra* note 55.

78. “These high-risk lending instruments have played a principal role in spurring the mortgage crisis, with over half of foreclosures in 2007 occurring on subprime mortgages.” Rachel Carlton, *Recent Development: Mortgage Forgiveness Debt Relief Act of 2007*, 45 HARV. J. ON LEGIS. 601, 606 (2008).

79. H.R. 743, *supra* note 55, at § 1(f).

80. H.R. 743, *supra* note 55.

81. *Id.*

82. *Id.* at § 10.

83. *Id.*

84. S. 8143, *supra* note 56.

tional home loans.<sup>85</sup> The state district court where the foreclosure action is filed will schedule and oversee the settlement conference within sixty days after proof of service is filed with the court.<sup>86</sup> The Bill specifically provides that the settlement conference is in place to determine if the parties can “reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other work out options may be agreed to.”<sup>87</sup>

The Bill also provides that any defendant appearing pro se will be deemed to have made a motion to proceed as indigent.<sup>88</sup>

The aforementioned sections of the Bill will go into effect immediately, however, it should be noted that other sections of the Bill will not go into effect until 2009 or later.<sup>89</sup>

### 5. Refusing Mandatory Arbitration Provision in Subprime Loans: Florida House Bill 979

Two identical pieces of legislation, House Bill 979 and Senate Bill 2846, concerning subprime mortgages, were introduced in the Florida House and Senate on March 4, 2008. H.B. 979 was sponsored by Rep. Scott Randolph, and co-sponsored by Rep. Ronald Brise, Rep. Chuck Chestnut, Rep. Darren Soto and Rep. Shelley Vana. S.B. 2846 was sponsored by Sen. Ted Deutch and Sen. Gary Siplin.

Florida has been hard hit by the foreclosure crisis sweeping the nation. The state is second in the nation for the total number of foreclosures: there is one foreclosure for every ninety-five households in Florida.<sup>90</sup> The situation is particularly severe in South Florida, where one in twenty-five homes is in foreclosure in St. Lucie County.<sup>91</sup> Florida estimates that state revenues will be down \$1.4 billion in 2008 and possibly down \$2.5 billion next year.<sup>92</sup>

The proposed Bill included several changes to the Florida Fair Lending Act,<sup>93</sup> including a provision negating mandatory arbitration provisions in subprime loans. Subsection 14 of the proposed Bill stated:

No subprime home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process for any and all claims and defenses the borrower may

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85. *Id.* at R. 3408.

86. S. 8143, *supra* note 56.

87. *Id.*

88. *Id.*

89. *Id.*

90. Associated Press, *Fla. Home Foreclosure Crisis Targeted*, FORBES, Feb. 20, 2008, available at <http://www.forbes.com/markets/feeds/afx/2008/02/20/afx4678047.html> (last visited Nov. 3, 2008).

91. Michael Bender, *Lawmakers, Crist Tackle Foreclosures*, PALM BEACH POST, Feb. 21, 2008, at 16A.

92. *Id.*

93. The Florida Senate Bill Analysis and Fiscal Impact Statement, Apr. 12, 2008, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2008s2846.bi.doc&DocumentType=Analysis&BillNumber=2846&Session=2008> (last visited Sept. 21, 2008). The Florida Fair Lending Act was passed in 2002. *Id.*

have against the lender, broker, or other party involved in the loan transaction.<sup>94</sup>

In addition to the mandatory arbitration clause provision, the Bill also attempted to address the concern with so-called balloon payments, where monthly mortgage payments increase dramatically after an initial introductory period of low payments.<sup>95</sup> In conjunction with the Bill, Florida Gov. Charlie Crist formed the Florida Home Ownership Promotes the Economy Task Force to address the foreclosure situation.<sup>96</sup>

After introduction, H.B. 979 was referred to the Banking and Insurance Committee, the Commerce Committee, the Judiciary Committee, and General Government Appropriations Committee. On Apr. 15, 2008, H.B. 979 received a favorable vote by the Banking and Insurance Committee. However, H.B. 979 died in the Committee on Commerce on May 2, 2008. S.B. 2846 reached a similar fate on May 5, 2008.<sup>97</sup>

## 6. Conclusion

The impact of the foreclosure crisis is broad and far-reaching. "One out of every seventeen mortgage holders is no longer able to make payments on time, the highest rate in over twenty years."<sup>98</sup> There are several proposed solutions to the foreclosure crisis and its subsequent impact on the economy at large. Though a significant portion of the news media's attention has focused on large federal bailouts and regulatory solutions, ADR provisions have also appeared in some state legislative proposals.

The proposed ADR solutions primarily focus on alleviating the pressure on consumers. By repealing or forbidding mandatory arbitration clauses in home loans, these state bills attempt to lower the pressure on homeowners and allow them a greater opportunity to make mortgage payments rather than face foreclosure. Similarly, the bills which invoke mediation and settlement procedures prior to foreclosure provide an opportunity for homeowners to restructure mortgage payments rather than go through foreclosure.

### *D. Binding Arbitration of Disputes When Negotiating Collective Bargaining Agreements In Public Schools*

**Bill Number:** Delaware House Bill 283  
**Summary:** This Bill adds a provision to the Public School Employment Relations Act to provide for more effective dispute

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94. H.R. 979, *supra* note 57.

95. *Id.*

96. Bender, *supra* note 91.

97. See S. 2846, 110th General Assem., Reg. Sess. (Fla. 2008).

98. Rossman, *supra* note 59. "The Joint Economic Committee of Congress predicts that from 2007 to 2009 there could be nearly 2 million foreclosures nationwide on homes purchased with subprime loans alone." *Id.*

resolution procedures when negotiating a collective bargaining agreement.  
Status: Signed by the Governor on Mar. 20, 2008.

### 1. Introduction

Delaware House Bill 283 adds dispute resolution procedures to the Public School Employment Relations Act (“PSERA”) to cope with disputes arising in negotiating a collective bargaining agreement. Under current law, there are provisions for fact-finding, but these recommendations are not binding.<sup>99</sup> Because the recommendations could be ignored, negotiations became a matter of who could hold out the longest.<sup>100</sup> In Delaware, public school employees are prohibited from striking, so their employers could simply ignore the fact-finder’s recommendations, thereby leaving the employees with no remedy.<sup>101</sup>

House Bill 283 was introduced on Jan. 9, 2008, and was assigned to the Labor Committee in the House.<sup>102</sup> Just one day later, on Jan. 10, the Labor Committee reported favorably and the Bill was sent back to the House floor.<sup>103</sup> Two amendments, House Amendment One and House Amendment Two, were introduced and placed with the Bill.<sup>104</sup> Amendment Two was passed, but Amendment One was stricken.<sup>105</sup> With Amendment Two, the Bill passed the House overwhelmingly with forty yes votes, zero no votes, and one absent.<sup>106</sup> In March, House Bill 283 was assigned to the Labor & Industrial Relations Committee in the Senate and reported favorably out of the committee.<sup>107</sup> On Mar. 13, 2008, H.B. 283 passed the Senate with nineteen yes votes, one no vote, and one absent vote.<sup>108</sup> One week later, it was signed into law by the Governor.<sup>109</sup>

### 2. The Bill

House Bill 283 struck and replaced Section 4002(j) of Title 14 of the Delaware Code in its entirety.<sup>110</sup> The new procedure is called Binding Interest Arbitration (“BIA”); which is a procedure by which the “Public Employment Relations Board (PERB) *shall* make written findings of fact and a decision for *final and binding* resolution of an impasse arising out of collective bargaining.”<sup>111</sup> The Bill

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99. H.R. 283, 144th General Assem., Reg. Sess. (Del. 2008); Bill Synopsis, available at <http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HB+283> (last visited Aug. 30, 2008).

100. *Id.*

101. *Id.*

102. *Id.* at Actions History.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. H.R. 283, *supra* note 99, at § 1.

111. *Id.* at § 1(j) (emphasis added).

also amended several other sections and replaced various terms with phrases like “fact-finders” and “fact-finding.”<sup>112</sup>

The crux of House Bill 283 struck and replaced Section 4015 of Title 14 in its entirety; this section actually details how the arbitration process works.<sup>113</sup> The PERB must make a determination within seven days of receipt of a petition for BIA as to whether BIA would be appropriate and in the public interest.<sup>114</sup> The Board appoints an arbitrator and he or she holds hearings in order to define the areas of dispute, determine facts, and render a decision.<sup>115</sup> The arbitrator is even authorized to administer oaths and issue subpoenas on behalf of the parties.<sup>116</sup> The arbitrator must specify the basis for his findings and take into consideration several factors listed under subsection (d).<sup>117</sup>

The arbitrator must serve his written determination on the public school employer, the certified exclusive representative, and the Board within thirty days after the conclusion of the hearings, but not later than 120 days from the date of his appointment.<sup>118</sup> The decision becomes an “Order of the Board” within five business days after it is served on the parties.<sup>119</sup> The costs are to be split equally between the parties, and no part of this process shall be construed to prohibit any good-faith bargaining outside of the arbitration.<sup>120</sup>

The arbitrator’s decision can be appealed like any order of the PERB to the Court of Chancery.<sup>121</sup> The decision would then be reviewed like any other agency hearing decision—on the basis of being contrary to law or not supported by substantial evidence.<sup>122</sup>

The Bill was amended by House Amendment Two, which deleted language in the synopsis that assumed public employers operate in bad faith by ignoring the recommendations of fact-finders.<sup>123</sup> The amendment further clarified the applicability of the Bill to collective bargaining processes in progress at the time of its enactment.<sup>124</sup> House Amendment One was struck and it provided the same changes as Amendment Two but, in addition, codified the PERB’s interpretation of *FOP Lode 9 v. City of Seaford* (IV PERB 2421, 2675 (2000)).<sup>125</sup>

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112. *Id.* at § 2.

113. *Id.* at § 5.

114. *Id.* at § 5(a).

115. *Id.* at § 5(b)-(c).

116. *Id.* at § 5(c).

117. These include: (1) the interests and welfare of the public; (2) comparison of wages, salaries, benefits, and hours of employees; (3) overall compensation presently received by employees; (4) any stipulations of the parties; (5) the lawful authority of the public school employer; (6) financial ability of the public school employer, and (7) a “catchall” provision. *Id.* at § 5(d).

118. *Id.* at § 5(e).

119. *Id.*

120. *Id.* at § 5(f)-(g).

121. H.R. 283, *supra* note 99.

122. *Id.*

123. H.R. 283, House Amendment 2 (Del. 2008); available at [http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HA+2+to+HB+283/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HA+2+to+HB+283/$file/legis.html?open) (last visited Nov. 22, 2008).

124. *Id.*

125. *Id.*

### 3. Conclusion

Without a final and binding dispute resolution procedure, public school employees were generally at a disadvantage in collective bargaining negotiations. This does not serve the public's interest of having the terms and conditions of employment resolved in an efficient and fair manner. With the more effective dispute resolution procedure provided by this Bill, both parties will have a much greater incentive to arrive at a voluntary agreement.

#### *E. Dispute Resolution For Homeowners' Associations*

Bill Number:	Colorado House Bill 1135
Summary:	Requires common interest communities to adopt and follow written policies governing the imposition of fines. Creates a fair and impartial method of determining whether a violation of the covenants actually occurred and provides the unit owner notice and an opportunity to be heard before an impartial decision-maker.
Status:	Signed by the Governor on Apr. 21, 2008.

#### 1. Introduction

More than 1.5 million Coloradans live in neighborhoods governed by Homeowners' Associations ("HOA").<sup>126</sup> In Colorado, Homeowners' Associations are governed by the Uniform Common Interest Ownership Act of Colorado's Revised Statutes.<sup>127</sup> When a homeowner's property rights are violated by their HOA, often times, the existing statute provides homeowners with few options. As a result, Colorado House Bill 1135 was drafted to invalidate covenants that prohibit building modifications to accommodate persons with disabilities, to require due process in penalty assessment procedures, and to provide for alternative dispute resolution in this regard.

House Bill 1135 was introduced on Jan. 15, 2008, and was assigned to the House Committee on Local Government.<sup>128</sup> On Jan. 22, 2008, the committee reported favorably with amendment.<sup>129</sup> There was a second reading in the House of Representatives and the committee amendment was adopted.<sup>130</sup> On Jan. 25, House Bill 1135 passed and was sent to the Senate.<sup>131</sup> On Mar. 13, 2008, the Senate Committee on Local Government reported favorably with an amendment.<sup>132</sup> The Senate had a second reading, adopted the amendment, and the Bill passed the

126. Colorado House Democrats, *Rep. Carroll's HOA Bill Sails Through House*, [http://cohoustedems.typepad.com/my\\_weblog/2008/01/rep-carrolls-ho.html](http://cohoustedems.typepad.com/my_weblog/2008/01/rep-carrolls-ho.html) (last visited Nov. 8, 2008).

127. COLO. REV. STAT. ANN. § 38-33.3-102 (West 2008).

128. H.R. 1135, 66th General Assem., Reg. Sess. (Col. 2008); Bill History, available at [http://www.leg.state.co.us/CLICS/CLICS2008A/csl.nsf/fsbillcont3/6A4790617BB1C5E987257372007B6971?Open&file=1135\\_ren.pdf](http://www.leg.state.co.us/CLICS/CLICS2008A/csl.nsf/fsbillcont3/6A4790617BB1C5E987257372007B6971?Open&file=1135_ren.pdf) (last visited Nov. 22, 2008).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

Senate.<sup>133</sup> Because of the second amendment, House Bill 1135 was sent back to the House and on Apr. 1, 2008, the House concurred with the amendment.<sup>134</sup> On Apr. 21, 2008, the Bill was signed into law by the Governor.<sup>135</sup>

## 2. *The Bill*

Colorado House Bill 1135 amends Section 38-33.3-106.5(1) of the Colorado Revised Statutes through the addition of a new paragraph.<sup>136</sup> It states that a Homeowner's Association cannot prohibit reasonable modifications to a unit as necessary to afford a person with disabilities full use of the premises.<sup>137</sup>

The Bill also provides for dispute resolution for Homeowners' Associations under Section 38-33.3-209.5 of the Colorado Revised Statutes.<sup>138</sup> The Bill changes Section 2 and states, "notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless . . ." the association meets several requirements listed in subsections (a) and (b).<sup>139</sup> Subsection (a) states that association must adopt and follow a written policy governing the imposition of fines.<sup>140</sup> Subsection (b) requires that the policy include a fair and impartial fact-finding process concerning the alleged violation.<sup>141</sup> Also, the process must, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision-maker.<sup>142</sup> Subsection (b) also defines an impartial decision-maker as "a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions . . . and do not have any direct personal or financial interest in the outcome."<sup>143</sup>

Section 3 deals with costs and attorneys' fees that arise out of the dispute resolution process.<sup>144</sup> If the unit owner is not held responsible for the alleged violation, the association cannot allocate any costs or attorneys' fees against the unit owner.

Colorado House Bill 1135 also amends Section 38-33.3-124 of the Colorado Revised Statutes.<sup>145</sup> The statute previously stated that ADR is encouraged in homeowner disputes and the Bill adds that the General Assembly endorses and encourages associations, unit owners, and all related parties to make use of all

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133. *Id.*

134. *Id.*

135. *Id.*

136. H.R. 1135, *supra* note 128.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* This subsection also explains when a decision maker does *not* have a "direct personal or financial interest." *Id.* That exists when the decision maker, as a result of the outcome, will not receive any greater benefit or detriment than the general member. *Id.*

144. *Id.*

145. *Id.*



available public and private resources for alternative dispute resolution.<sup>146</sup> The statute already required associations to adopt a written policy setting forth a procedure to address disputes between parties, so this amendment just further encourages the use of ADR.<sup>147</sup>

### 3. Conclusion

This Bill advances the use of alternative dispute resolution in Homeowners Association disputes and requires due process. Now, Homeowners Associations must create a fair and impartial method of dispute resolution to determine whether a covenant has been violated and unit owners must receive notice and an opportunity to be heard.

*F. Peer Mediation Statutes: Slow Progress in Providing Safer School Environments: Florida Senate Bill 1068,<sup>148</sup> Rhode Island House Bill 7569,<sup>149</sup> Mississippi House Bill 1258,<sup>150</sup> Tennessee Senate Bill 2921<sup>151</sup>*

Bill Numbers:	Florida Senate Bill 1068 (companion House Bill 505); Rhode Island House Bill 7569, Mississippi House Bill 1258, Tennessee House Bill 2790 (companion Senate Bill 2921)
Summary:	These bills provide various levels of requirement or encouragement for implementing peer mediation as a means of conflict resolution and violence prevention in elementary, middle, and secondary schools.
Status:	Florida (died in Committee on Education Pre-K-12 on May 5, 2008); Rhode Island (effective without Governor's signature on July 5, 2008); Mississippi (died in House Committee on Education on Feb. 19, 2008); Tennessee (signed by Governor on May 6, 2008).

### 1. Introduction

As concerns continue to mount over school violence, ADR practices have expanded beyond the legal system and branched out as a means of deterring violence among students.<sup>152</sup> Educators' concerns about school conflicts are valid. "One-half of all violence against teenagers occurred in school buildings, on school

146. *Id.* The Bill specifically states the Office of Dispute Resolution within the Colorado Judicial Branch and through its Web site.

147. *Id.*

148. S. 1068, 110th General Assem., Reg. Sess. (Fla. 2008).

149. H.R. 7569, 2007 Leg. Sess. (R.I. 2008).

150. H.R. 1258, 123d Ann. Leg., Reg. Sess. (Miss. 2008).

151. H.R. 2790, 105th Gen. Assem. (Tenn. 2007).

152. *See generally* David W. Johnson & Roger T. Johnson, *Conflict Resolution and Peer Mediation Programs in Elementary and Secondary Schools: A Review of the Research*, 66 REV. EDUC. RES. 459 (Winter 1996).

property, or on the street in the vicinity of” a school.<sup>153</sup> As a reaction, various groups have attempted to apply principles and methods of ADR in schools in order to curb school violence. One example of such a program is Project Outreach, formed by the American Bar Association (“ABA”) “to reduce societal conflict and school violence through peer mediation programs.”<sup>154</sup>

With Project Outreach such a rousing success, the program received the ABA Section Officers Conference Meritorious Service Award, and has been praised by various local leaders as well as Former Attorney General Janet Reno and Supreme Court Justice Sandra Day O’Connor.<sup>155</sup> With this well-publicized support and several other effective applications of schoolhouse ADR, states might benefit from enacting legislation both requiring and advocating the use of alternative dispute resolution in the elementary and secondary schools within their borders. This has not been the experience except in one state.

Peer mediation is based upon the classic premise of traditional mediation that “right may indeed exist on both sides.”<sup>156</sup> This focus on the equal value of each party’s position achieves a solution that is satisfactory to both sides of the conflict.<sup>157</sup> As a result, equal time, respect, and participation are allowed to both parties to a conflict.<sup>158</sup> Peer mediation as it is applied to schools seeks to incorporate the tenets of mediation, but has students serve as the mediators instead of teachers, principals, or other authority figures.<sup>159</sup> The purpose of training students to serve as mediators provides for a program that is “more equal and relevant” to students.<sup>160</sup>

Like all mediation programs, participation in peer mediation is both voluntary and confidential.<sup>161</sup> This, however, is almost universally met with the caveat that confidentiality fails if the information revealed pertains to either illegal or life threatening matters.<sup>162</sup> During mediation sessions, students are encouraged to voice their concerns in a calm manner, thereby enabling them to explain to the other student the reasons for their actions.<sup>163</sup> As a result, students are taught to resolve disputes in a peaceful manner and to tackle their problems “head on.”<sup>164</sup>

Decisions rendered at peer-mediation sessions are written by the students participating in the mediation.<sup>165</sup> As a result, students are able to better understand

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153. Loren Podwill et al., *When It Comes To Public Service And Pro Bono, TIPS Walks The Talk*, 37 THE BRIEF 18, 19 (Summer 2008).

154. *Id.*

155. *Id.*

156. Kelly Rozmus, *Peer Mediation Programs In Schools: Resolving Classroom Conflict But Raising Ethical Concerns?*, 26 J. L. & EDUC. 69, 72 (1997).

157. *Id.*

158. *Id.*

159. *Id.* It is interesting to note however, that due to the success that peer mediation has had in preventing and solving numerous disciplinary and peer-to-peer conflicts, some school districts are turning to mediation as a means to solve disputes among faculty, and well as between the parents. *Id.*

160. *Id.*

161. Simone Marie Freeman, *Upholding Students' Due Process Rights: Why Students Are in Need of Better Representation at, and Alternatives to, School Suspension Hearings*, 45 FAM. CT. REV. 638, 647 (2007).

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

their obligations under the agreement, as well as the fact that they will be bound by their agreed upon terms.<sup>166</sup> Additionally, many peer mediation programs allow for subsequent mediations should one party breach the terms.<sup>167</sup> This allows the success of the individual mediation agreement and, as a result, the entire peer mediation program lies solely in the hands of the participating students.<sup>168</sup>

Because of the various administrative levels where peer mediation programs may be instituted,<sup>169</sup> it is difficult to pinpoint the exact number of conflict resolution or mediation programs in existence nationwide or how many states have schools participating in such a program.<sup>170</sup> Some studies suggest that around 15,000 to 20,000 such programs are currently implemented in American schools.<sup>171</sup>

In spite of the positive results that peer mediation and other conflict resolution programs provide, state legislatures are still resistant to creating statewide programs providing for and/or requiring the implementation of such programs. Prior to the latest legislative sessions, only three states, Minnesota, North Carolina, and West Virginia required any form of conflict resolution among character development topics in primary or secondary education.<sup>172</sup> This trend continues in 2008, as no other states have chosen to join them.

## 2. Florida House Bill 505/Senate Bill 1068

Proposed Florida House Bill 505 and Senate Bill 1068, had they passed, would have served as an amendment to Florida Statute 1003.42.<sup>173</sup> Section 1003.42 details the required curriculum for schools in the State of Florida including not only the core course work in civics, history, math, and science, but also the requirements of character and health education.<sup>174</sup> Specifically, the amendment was to add conflict resolution and the use of peer mediation as valuable lessons that must be taught to students in kindergarten through twelfth grade.<sup>175</sup>

The use of peer mediation in schools as a mandatory part of the school curriculum would demonstrate a strong commitment in Florida, not only to the prevention of violence in schools, but also to the success of ADR as a whole. Research demonstrates that students who are trained in the use of conflict resolution strategies, such as mediation, take their skills with them into adulthood and apply these skills to all conflicts they encounter.<sup>176</sup> Participants in peer mediation programs

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166. *Id.*

167. *Id.*

168. *Id.*

169. Such as individual schools, districts, counties, or even in recent years, statewide. *See generally* ALA. CODE § 41-15B-2.2 (1975) (allowing Children First Trust Fund receiving tobacco revenues to be used as grant money for school programs teaching peer mediation); LA. REV. STAT. ANN. § 17:416 (2001) (authorizing peer mediation as a means of pupil discipline).

170. Freeman, *supra* note 161, at 647.

171. *Id.*

172. *See* MINN. STAT. ANN. § 120B.232 (West 2008); N.C. GEN. STAT. § 115C-81 (2008); and W. VA. CODE ANN. § 18-2-13 (LexisNexis 2008). Of these states, only North Carolina specifically mentions peer mediation.

173. S. 1068, *supra* note 148.

174. FLA. STAT. § 1003.42 (2008).

175. S. 1068, *supra* note 148.

176. Johnson & Johnson, *supra* note 152.

have long advocated the benefits of peer mediation later on in life.<sup>177</sup> Encouraging for proponents of peer mediation, when programs are well run and adequately supported, many of them are successful as much as 93% of the time.<sup>178</sup> Additionally, research indicates that peer mediation programs result in improvements in the school environment and lower suspension rates.<sup>179</sup> Also, research suggests that the use of peer mediation results in an increase of positive attitudes toward resolving school discipline issues, a decrease in physical fights, and an increase in the self-esteem of the students participating in peer mediation.<sup>180</sup>

By training their students in the use of peer mediation, Florida could have invested in the prevention of future conflicts and already begun training a future generation of mediators. For these reasons, the Florida Amendment was forward thinking in bringing peer mediation to its students.

### 3. Rhode Island House Bill 7569

Rhode Island was successful in amending its legislation to allow for the implementation of peer mediation for students.<sup>181</sup> However, unlike the failed Florida legislation which focused on curriculum, the Rhode Island statute focuses upon what the legislature deems to be acceptable student discipline.<sup>182</sup> As a result, the Rhode Island bill, rather than requiring or suggesting peer mediation or other conflict resolution methods, merely grants permission to use peer mediation as part of resolving student conflicts.<sup>183</sup>

Though the Rhode Island Legislature should be praised for its specific mention of mediation, as well as for making some progress in the advancement of peer mediation, the lack of strong language seems to provide little incentive to schools in Rhode Island to actively invest in peer mediation for their students.<sup>184</sup>

### 4. Mississippi House Bill 1258

The proposed legislation from the Mississippi House of Representatives regarding peer mediation and conflict resolution in schools died in committee.<sup>185</sup> However, unlike the Florida bill, the Mississippi bill was much less ambitious. Mississippi's proposed legislation would have mandated that the Mississippi Department of Education develop guidelines to serve as a model for addressing the health needs of students.<sup>186</sup> This included a requirement of at least fifteen hours of instruction in what it has termed "core components."<sup>187</sup> Conflict resolution is listed as one of the "core components" of this program, but peer mediation was

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177. Rozmus, *supra* note 156, at 82.

178. Freeman, *supra* note 161, at 647.

179. *Id.*

180. Rozmus, *supra* note 156, at 81.

181. H.R. 7569, *supra* note 149.

182. *Id.*

183. *Id.*

184. *Id.*

185. H.R. 1258, *supra* note 150.

186. *Id.*

187. *Id.*

never specifically mentioned.<sup>188</sup> Thus, the State of Mississippi continues to provide little state assistance to schools attempting to incorporate ADR practices, such as peer mediation.

Some may view this as unfortunate because the ABA praises peer mediation for “allow[ing] all parties to share in the responsibility for the conflict and the solutions.”<sup>189</sup> Also, while schools vary as to what types of incidents are allowed to be handled by peer mediation, one of the key benefits of peer mediation is that it often allows schools to avoid serious discipline problems, including those leading to a student’s suspension or expulsion.<sup>190</sup> This is due to the fact that peer mediators are called upon most often to handle instances of arguing, teasing, rumors, ongoing animosity between students, bullying, and conflicts between couples.<sup>191</sup> These are situations that, when allowed to simmer, can often boil over into full-scale disciplinary problems, often erupting into violence if left unchecked.<sup>192</sup> Such problems might have been addressed had a stronger stance been taken by the Mississippi Legislature in favor of peer mediation and nonviolent conflict resolution.

### 5. Tennessee House Bill 2790

Tennessee amended its requirements for character education, which was initially written to require that all public school students from kindergarten through twelfth grade receive instruction in the use of nonviolence as a means of conflict resolution as part of the course on character education.<sup>193</sup> This would be included in the specific curriculum of the state rather than the general quality standards that had existed previously.<sup>194</sup>

However, before passage, the Bill was amended, changing the language from requiring nonviolent conflict resolution to merely urging that schools adopt nonviolent conflict resolution education, effectively removing all teeth from the Bill.<sup>195</sup>

### 6. Conclusion

Conflict among students is a common occurrence in schools.<sup>196</sup> Even worse, crime rates are currently rising among juveniles.<sup>197</sup> Teenagers are now arrested for violent crimes more than young adults.<sup>198</sup> The violent death rate for teens

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188. *Id.*

189. Freeman, *supra* note 161, at 647.

190. Janet Stidman Eveleth, *Teaching Children About the Law*, 39 MD. B.J. 10, 15 (2006).

191. See Linda Mealey-Lohmann & Eduardo Wolle, *Pockets of Innovation in Minnesota’s Alternative Dispute Resolution Journey*, 33 WM. MITCHELL L. REV. 441, 460 (2006); Rozmus, *supra* note 156, at 76.

192. Rozmus, *supra* note 156, at 69.

193. H.R. 2790, *supra* note 151.

194. *Id.* at Fiscal Note.

195. H.R. 2790, *supra* note 151.

196. See Johnson & Johnson, *supra* note 152.

197. See Rozmus, *supra* note 156, at 82.

198. *Id.*

between fifteen and nineteen years of age is sixty-nine per 100,000.<sup>199</sup> Homicide is the second leading cause of death for people aged fifteen to twenty-four.<sup>200</sup> Additionally, research suggests that students not trained in effective conflict resolution strategies often use methods that do more harm than good by ignoring important factors such as maintaining relationships.<sup>201</sup>

Support for peer mediation programs from students involved, both as mediators and disputants, administrators, and parents has been “overwhelmingly positive.”<sup>202</sup> Yet government support for peer mediation for students is largely absent. Of the three states that include conflict resolution as a statutory requirement of character education, only North Carolina specifically requires mediation.<sup>203</sup> This is surprising considering the fact that bills such as Florida’s proposed amendment have been deemed to have a minimal fiscal impact.<sup>204</sup> Unfortunately, with no real records detailing why these bills failed or others do not exist, the reason for their absence is a mystery.

## II. HIGHLIGHTS

### A. Arizona House Bill 2845

Arizona House Bill 2845 adopts most of the Revised Uniform Arbitration Act (“RUAA”) in an entirely new Chapter, 21, of Title 12 (courts and civil proceedings) of its code.<sup>205</sup> Chapter 21 will have 29 subsections ranging from section 12-3001 (Definitions) to 12-3029 (Relationship to Electronic Signatures in Global and National Commerce Act).<sup>206</sup> These subsections list arbitration-related definitions and provide requirements for notice, effect of arbitration agreements, application for judicial relief, validity of agreements to arbitrate, motions to compel, and several other arbitration related provisions.<sup>207</sup> This bill is nearly identically to the RUAA, but changes some language and omits sections 31, 32, and 33.<sup>208</sup>

The bill also modifies other parts of the Arizona Revised Statutes to recognize the new chapter. For instance, section 10-1806, settlements of arbitration disputes in close corporations, now mentions that Chapter 21 controls arbitration disputes to the extent the articles of incorporation do not provide otherwise.<sup>209</sup> This bill also changes section 12-2101.01 to recognize that Chapter 21 will now govern appeals from arbitration awards.<sup>210</sup> It also modifies section 41-2615, re-

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199. *Id.*

200. *Id.*

201. Johnson & Johnson, *supra* note 152.

202. Rozmus, *supra* note 156, at 83.

203. N.C. GEN. STAT. § 115C-81(a4) (2008).

204. H.R. 505, Reg. Sess. (Fla. 2007); Staff Analysis (*available at* <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0505b.EICP.doc&DocumentType=Analysis&BillNumber=0505&Session=200>) (last visited Sept. 1, 2008).

205. H.R. 2845, 48th Leg., 2d Reg. Sess. (Ariz. 2008); Bill Summary, *available at* <http://www.azleg.gov/legtext/48leg/2r/bills/hb2845h.pdf> (last visited Oct. 21, 2008).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

medies for claims against the state or an agency of the state, to include Chapter 21.<sup>211</sup>

### *B. California Assembly Bill 2641*

On Feb. 22, 2008, Assembly Member Cook introduced Assembly Bill 2641 for the protection of military veterans.<sup>212</sup> The bill would add section 395.6 to the Military and Veterans Code and require the Governor and each state agency to appoint an ombudsman to take and resolve complaints made by members of the California National Guard or other reservists.<sup>213</sup> The purpose of the bill is to address complaints of violations of the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. § 4301) and issues relating to state pay.<sup>214</sup> The ombudsman may only address complaints by state employees who are members of either the National Guard or a reserve component of the Armed Forces and who encounter problems regaining their state employment when they return from military service.<sup>215</sup> The agencies must appoint ombudsmen to hear complaints, and the Governor can appoint ombudsmen to assist these agencies if necessary.<sup>216</sup>

### *C. New Jersey Senate Bill 310*

New Jersey Senate Bill 310<sup>217</sup> was introduced on Jan. 8, 2008, to provide fair and efficient procedures for managing disputes between homeowners and their homeowner's associations.<sup>218</sup> The bill requires that homeowners' association liens and disputes be reviewed by a volunteer arbitrator or mediator in a two-step process.<sup>219</sup> S.B. 310 would allow homeowner's association disputes to initially be processed through "preliminary ADR."<sup>220</sup> At this first level, a homeowner's association may use a committee to resolve disputes as long as no one on the committee is also on the homeowner's association board, no one on the committee is involved in the dispute, and all parties to the dispute agree to the use of the committee.<sup>221</sup> If preliminary ADR fails to resolve the dispute, the matter moves to Level I ADR, which provides a volunteer to resolve the dispute.<sup>222</sup> Homeowner's associations that receive a favorable ruling from mediation or arbitration will be reimbursed for expenses by submitting the matter to the county recording office.<sup>223</sup> The bill also provides for the training of volunteer mediators and arbitra-

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211. *Id.*

212. Assem. B. 2641, 2007-2008 Leg., Reg. Sess. (Cal. 2008); Bill History, available at <http://www.assembly.ca.gov/acs/acsframeset2text.htm> (type in bill number 2641, then click on History) (last visited Oct. 21, 2008).

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. S.310, 213th Leg., Reg. Sess. (N.J. 2008).

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

tors through the Secretary of State's Office of Dispute Settlement.<sup>224</sup> These services would be funded from registration fees collected from homeowner's associations.<sup>225</sup> It is important to note that this bill is a part of a package of proposed legislation; the bill will remain inactive until the enactment of companion legislation.<sup>226</sup>

#### *D. South Dakota House Bill 1095*

The South Dakota Family Law Arbitration Act<sup>227</sup> was introduced on Jan. 8, 2008, to provide arbitration to resolve disputes concerning alimony, child custody, and child support disputes.<sup>228</sup> The bill aims to provide both a fair and efficient resolution to disputes that commonly arise out of divorce.<sup>229</sup> The Family Law Arbitration Act governs all agreements to arbitrate such disputes entered into after Jan. 8, 2008, including arbitration agreements entered into before and after the dissolution of marriage.<sup>230</sup> The bill also details a lengthy procedures and details concerning the arbitration process for family law disputes.<sup>231</sup> The bill was passed by a vote of eleven to two on Jan. 16, 2008.<sup>232</sup>

#### *E. Tennessee House Bill 2538*

Under current Tennessee law, courts are required to order the parties in divorce and separate maintenance cases to participate in mediation.<sup>233</sup> This court-ordered mediation may be either waived or extended for various reasons.<sup>234</sup> Waiver is granted if the court finds that either parent is unable to afford the costs of the proposed dispute resolution process, unless costs are waived or subsidized by the state, if the court enters a default judgment against the defendant, or if the court preempts the process upon a motion by either party for just cause.<sup>235</sup> Tennessee House Bill 2538 provides for five criteria the court may consider in deciding to waive or extend mediation.<sup>236</sup> They include: (1) if either party is unable to afford the cost of mediation unless the costs are waived or subsidized by the state, or if the cost of mediation would be an unreasonable burden on either or both of the parties; (2) the parties have entered into a written marital dissolution agreement or an agreed order resolving all pending issues in the divorce; (3) the parties have participated in a settlement conference; (4) the court finds a substantial likelihood that mediation will result in an impasse; and (5) other cause sufficiently

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224. *Id.*

225. *Id.*

226. *Id.*

227. H.R. 1095, 83d Leg. Assem., Reg. Sess. (S.D. 2008).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. TENN. CODE ANN. §36-4-131 (West 1997).

234. *Id.*

235. *Id.*

236. H.R. 2538, 105th General Assem., Reg. Sess. (Tenn. 2008).



found by the court.<sup>237</sup> Additionally, the bill would remove the requirement that mediation be completed and a report filed with the court within 180 days from the date the divorce complaint was filed.<sup>238</sup> The bill would apply to all divorce and separate maintenance cases where mediation has not been ordered prior to July 1, 2008.<sup>239</sup>

### F. Virginia House Bill 1131

Virginia House Bill 1131 would create the Office of the Children's Ombudsman to provide ombudsman services to any child served by the "child-serving agencies" of Virginia.<sup>240</sup> The head of the Office of the Children's Ombudsman is appointed by the governor to a four-year term if confirmed by the General Assembly.<sup>241</sup> The ombudsman's operation and management the Office of the Children's Ombudsman, includes making policy and reports and providing federal funding for the child services.<sup>242</sup> Additionally, the ombudsman is tasked with the resolution of complaints against the "child-serving agencies" of Virginia.<sup>243</sup> Specifically, the ombudsman will receive, investigate, and take all reasonable steps to mediate and resolve complaints regarding Virginia's "child-serving agencies."<sup>244</sup> The ombudsman is responsible for conducting investigations of all of the Commonwealth's child-serving agencies' various facilities, and would receive full access to any and all documents needed for a full investigation of any complaint.<sup>245</sup> Additionally, the ombudsman is authorized to enter into all necessary agreements with any relevant agency to ensure the protection of children.<sup>246</sup> The ombudsman is also tasked with reporting to law enforcement, state's attorneys, and the heads of any relevant agency any reasonable belief of a violation of state criminal law, and any serious problems, abuse, or deficiencies.<sup>247</sup> This bill only becomes effective if the general funds effectuating the purposes of the act are passed by the 2008 Virginia General Assembly.<sup>248</sup>

### G. Hawaii House Bill 3245

Hawaii House Bill 3245 was introduced Jan. 23, 2008, to provide for the development of reports relating to the professional conduct and capacity of physicians and surgeons.<sup>249</sup> Section 435-B of H.B. 3245 establishes a data repository that would create individual profiles on medical professionals.<sup>250</sup> These profiles

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237. *Id.*

238. *Id.*

239. *Id.*

240. H.R. 1131, 2008 General Assem., Reg. Sess. (Va. 2008).

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. H.R. 3245, 24th Leg., Reg. Sess. (Haw. 2008).

250. *Id.*

would be available for dissemination to the public.<sup>251</sup> Among other things, H.B. 3245 would require medical professionals to report all medical malpractice court judgments as well as all medical malpractice arbitration awards in which a payment was awarded to a complaining party within the last ten years.<sup>252</sup> Essentially, S.B. 3245 would make otherwise confidential and private arbitration award details available to the public.

### *H. Kansas Senate Bill 64*

Kansas Senate Bill 64 was introduced on Mar. 11, 2008 in an effort to establish a family dispute resolution fund in the Kansas State Treasury.<sup>253</sup> The fund would facilitate grants for the benefit of families in high conflict domestic cases.<sup>254</sup> Such grants would assist the parties in finding the most appropriate method for the resolution of their disputes.<sup>255</sup> The grants would fund programs that may include high conflict education courses, high conflict parenting plans, case management, child custody evaluations, neutral exchange sites, and other programs determined by the Kansas Supreme Court.<sup>256</sup> Expenditures made from the fund must be approved by the Chief Justice of the Kansas Supreme Court, or by persons designated by the Chief Justice.<sup>257</sup> The Chief Justice may apply for, and receive money from any source for inclusion in the fund.<sup>258</sup> Grants would be made to programs based on the number of persons served and any additional requirements determined by the Kansas Supreme Court.<sup>259</sup>

## III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced during the first eleven months of 2008 concerning alternative dispute resolution.

### Alabama

*Bills Enacted:* None

*Other Legislation:* H.B. 23 (adopts a modern revised uniform arbitration act); H.B. 649 (adopts a modern uniform arbitration act); H.B. 610 (provides for reimbursement of expenses incurred in representing nonmembers of labor organizations in the arbitration process); S.B. 389 (relates to the review by an ombudsman of expenses for medical treatment under workers' compensation statutes); H.B. 30, S.B. 36, S.B. 133 & S.B. 134 (provide that mediators may not be compelled to testify or produce documents in mediation proceedings).

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251. *Id.*

252. *Id.*

253. S. 64, 82d Leg., Reg. Sess. (Kan. 2008).

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

Alaska

*Bills Enacted:* None

*Other Legislation:* None

Arizona

*Bills Enacted:* H.B. 2845 (doubles the number of hours of conflict resolution training that constables are required to attend).

*Other Legislation:* H.B. 2845 (revises the Uniform Arbitration Act); S.B. 1233 (enacts the Revised Uniform Arbitration Act); S.B. 1187 (relates to the criminal justice budget reconciliation and the Alternative Dispute Resolution Fund); H.B. 2531 (provides arbitration time limits for objections); E.O. 14 (provides for a mediation process in the Department of Corrections).

Arkansas

*Bills Enacted:* None

*Other Legislation:* None

California

*Bills Enacted:* A.B. 2641 (requires the governor and each state agency and department to appoint an ombudsman to take complaints and to resolve those complaints for members of the state National Guard or Reserves of the Armed Forces); A.B. 2193 (enacts the Interstate and International Depositions and Discovery Act, which provides a process for the resolution of a dispute regarding discovery conducted in state for an out-of-state proceeding and requires a related fee); A.B. 2249 (requires financial institutions to furnish account information to a county adult protective services office and long-term care ombudsman when those entities are investigating the financial abuse of an elder or dependent adult); A.B. 2100 (requires the local ombudsperson or the local law enforcement agency to immediately report cases of known or suspected physical abuse in a long-term care facility); S.B. 1296 (provides that superior courts have exclusive jurisdiction over actions involving interest arbitration).

*Other Legislation:* A.B. 2740 (establishes prohibited acts and requirements applicable to servicing mortgage loans including the time period to respond to a borrower's request for information and for dispute resolution); A.B. 2514 (authorizes the Office of Historic Preservation to use mediation to resolve disputes); A.B. 2385 (provides methods by which agricultural employees may select by secret ballot a representative for collective bargaining purposes); A.B. 2074 (amends existing law to require the Department of Transportation to appoint an ombudsperson to receive and coordinate certain permit applications); A.B. 2846 (provides that in disputes between homeowners' associations and owners of separate interests, either party may request alternative dispute resolution); A.B. 2947 (provides certain statutory arbitration provisions shall not apply to any arbitration agreement applicable to a future controversy entered into between a long-term care facility, an elder or a dependent adult or his or her representative if specified violations occur); S.B. 1734 (requires the Department of Public Health to establish

a mediation process to resolve any dispute between the real estate investment trust and operator of the hospital, if the dispute may result in hospital closure); A.B. 1876 (authorizes dispute-related arbitration); A.B. 2762 (authorizes the California Department of Education to award funds to schools for necessary resources and tools to deal with incidents of hate crime and intergroup conflict on school campuses); S.B. 1402 (requires insurers providing liability insurance of chiropractors to send settlement of arbitration information to the Chiropractic Examiners Board); S.B. 1642 (provides for a mediation process and binding arbitration process for claim disputes between a contractor and public entity, charter city, or charter county which does not have an alternative dispute process, if those claims remain unresolved after a specified time period); A.B. 2847 (amends existing law to provide that written arbitration agreement provisions shall not apply in controversies between residential care facilities for the elderly and elders or dependent adults if specified violations occur); S.B. 1387 (provides that dental coverage overpayments are contested if providers have disputed such overpayments through the dispute resolution mechanism); A.B. 2336 (amends the Contractors State License Law to establish an arbitration process to resolve disputes between contractors and consumers); A.B. 1921 (revises and recasts the Davis-Stirling Common Interest Development Act relating to the use of alternative dispute resolution); A.B. 2220 (relates to the resolution of billing disputes between non-contracting hospitals and health care service plans); A.B. 2161 (requires residential mortgage loan licensees to establish grievance resolution systems that shall provide procedures to receive, review, and resolve grievances filed by consumers or borrowers); S.B. 1177 (relates to dispute resolution programs established by counties, creating an advisory commission on civil court fees to review the level of funding needed to support such programs); A.B. 1849 (authorizes legal service providers to determine titles and encumbrances on both parcels and structures of land and to provide related arbitration services); S.B. 1120 (revises the Office of Foster Care Ombudsperson); A.B. 1825 (establishes procedures for the resolution of disputes between a regional center and any publicly funded agency under the Lanterman Developmental Disabilities Services Act); A.B. 1809 (establishes the Interstate Commission on Educational Opportunity for Military Children to provide dispute resolution among member states); A.B. 1765 (requires mandated reporters to report elder abuse to local ombudsmen).

### Colorado

*Bills Enacted:* H.B. 1135 (provides for alternative dispute resolution in common interest communities).

*Other Legislation:* None

### Connecticut

*Bills Enacted:* S.R. 31 (confirms the nomination of Emanuel Psarakis, Esq., of Simsbury to be a member of the Education Arbitration Board); H.R. 80 (confirms the nomination of Gerald Weiner, Esq., of Woodbridge to be a member of the Education Arbitration Board).

*Other Legislation:* H.R. 7, H.R. 17, S.R. 9 & S.R. 17 (propose approval of an arbitration award between the boards of trustees of community-technical colleges

and the Federation of Technical College Teachers); S.B. 706 (concerns condominiums and other common interest communities; establishes an office of condominium ombudsman; establishes an office of condominium ombudsman to hear and investigate matters related to common interest communities); H.B. 5857 (concerns negotiations with respect to real property acquisition and use; implements a recommendation of the Ombudsman for Property Rights concerning property negotiations); H.B. 5604 (establishes the Office of Dredging Ombudsman within the Department of Environmental Protection); H.B. 5531 (establishes the Office of Dredging Ombudsman within the Department of Environmental Protection); H.B. 5154 (establishes a dispute resolution mechanism for homeowners following major catastrophes); S.B. 55 (concerns appointments to the Labor Department Board of Mediation and Arbitration).

Delaware

*Bills Enacted:* H.B. 283 (provides a procedure for more effective dispute resolution procedures for issues arising from negotiations of collective bargaining agreements).

*Other Legislation:* H.B. 327 (proposes enactment of the Model Employment Termination Act and concerns rights relating to collective bargaining agreements, including providing for arbitration to the Superior Court).

District of Columbia

*Bills Enacted:* None

*Other Legislation:* None

Florida

*Bills Enacted:* S.B. 1790 (relates to mediation and arbitration funding).

*Other Legislation:* H.B. 1399 & S.B. 1978 (revise provisions relating to Florida arbitration boards); S.B. 2536 (authorizes appointment of guardians ad litem and mediations in grandparent visitation matters following a prima facie showing of harm); S.B. 2600 (provides for grievance committee recommendations to be admissible in subsequent mediation or legal actions); H.B. 1219 (revises the Florida Arbitration Code relating to arbitration proceedings); H.B. 1185 & S.B. 2330 (provide for mediation and arbitration proceedings in disputes between parcel owners and homeowners' associations); S.B. 2076 (provides that the State Arbitration Code does not apply to certain insurance policies); H.B. 979 (relates to mandatory arbitration clauses within subprime loan agreements); S.B. 1564 (repeals a provision providing for the submission of a disputed rate complaint to an arbitration panel in lieu of an administrative hearing); S.B. 1566 (requires an entity that contracts with the Agency for Health Care Administration to provide certain health care services to develop and maintain an informal grievance system); S.B. 1196 (revises the date of application of a Florida Administrative Procedure Act provision under which an insurer may demand arbitration of a rate filing in lieu of a hearing); H.B. 505 & S.B. 1068 (require that the K-12 character development program include conflict resolution management, including peer mediation).

Georgia

*Bills Enacted:* None

*Other Legislation:* S.B. 534 (provides duties for the community and state ombudsmen); H.B. 1350 (provides for dispute resolution concerning selling and other trade practices).

Hawaii

*Bills Enacted:* H.B. 2688 (appropriates funds to provide for the expenses of the Hawaii Legislature, Auditor, Legislative Reference Bureau, and Ombudsman).

*Other Legislation:* H.C.R. 279 (calls for a joint session of the legislature for the purpose of appointing the ombudsman); S.B. 3161 (authorizes a district court to order parties to participate in an alternative dispute resolution process in cases to enjoin and temporarily restrain harassment); S.B. 2889 & H.B. 3331 (provide that certain specific matters are subject to mediation; permit unsatisfied mediation parties to pursue arbitration after thirty days); S.B. 3106 (modifies the factors that an arbitration panel must consider when reaching collective bargaining wage decisions); S.B. 2664 (establishes an ombudsman for each school district to address questions and concerns of interested parties); H.B. 2736 (requires appointed ombudsman to investigate complaints of violations of the small business bill of rights); H.B. 2478 (allows either party to a workers' compensation dispute to decide to refer their dispute to a referee, provided the decision is made within ten days of the filing of the claim); S.B. 2151 & H.B. 2289 (expand the long term care ombudsman program by adding three additional ombudsman positions); H.B. 2267 (transfers the review function of state procurement determinations to the Office of the Ombudsman); H.B. 1982 (appropriates funds for ombudsmen to develop and implement a pilot program using informed customers to investigate customer service at state agencies).

Idaho

*Bills Enacted:* H.J.M. 11 (urges the U.S. Forest Service to consider mediation and consultation regarding private property owners who hold easements pursuant to the Wild and Scenic Rivers Act); S.B. 1433 (provides an arbitration procedure concerning rental rates for floating homes).

*Other Legislation:* None

Illinois

*Bills Enacted:* None

*Other Legislation:* S.B. 2510 (provides that employers and employee representatives may agree to establish binding obligations and procedures relating to workers compensation, which must be limited to but need not include an alternative dispute resolution system); S.B. 2620 (creates the Office of Veterans State Employment Ombudsman); S.B. 2830 & H.B. 5275 (require that each licensed long-term care facility, assisted living or shared housing establishment, and supportive living facility complete and file with the Office of State Long Term Care Om-

budsman a Consumer Choice Information Report); H.B. 5157 (amends the Uniform Arbitration Act to provide that no agreement to arbitrate any liability arising out of the employment of a seaman, master vessel crew member, or railroad employee is binding or enforceable); H.B. 5550 (authorizes the Office of Long Term Care Ombudsman to enter into an agreement with the Department of Healthcare and Family Services to facilitate obtaining federal matching funds).

*Indiana*

*Bills Enacted:* None

*Other Legislation:* H.B. 1138 (provides that an independent cable programmer may request arbitration upon belief that it has been discriminated against by a vertically integrated cable operator that owns a competing programming channel); S.B. 243 (requires utilities to adopt dispute resolution procedures for property owners affected by the utilities' tree-cutting activity); S.B. 200 (provides that to serve as a mediator in an administrative proceeding, a person must be qualified as a mediator under the Supreme Court Rules, unless the parties and the administrative law judge agree to a mediator who is not qualified as such).

*Iowa*

*Bills Enacted:* None

*Other Legislation:* S.B. 685 (assesses a mediation fee in small claims court); H.F. 2272 (relates to exceptions to the conflict of interest restrictions for city officials, city employees, and civil service commissioners).

*Kansas*

*Bills Enacted:* None

*Other Legislation:* S.B. 546 (establishes a family dispute resolution fund); S.B. 2631 (requires arbitration of claims of individuals in certain circumstances that concern cities).

*Kentucky*

*Bills Enacted:* S.B. 68 (establishes Interstate Commission to provide oversight, enforcement, and dispute resolution mechanisms for children of military families).

*Other Legislation:* S.B. 709 (proposes amendments to the Constitution of Kentucky relating to medical malpractice, including provisions for alternative dispute resolution); H.J.R. 17 (directs the Cabinet for Health and Family Services to report to the Office of the Ombudsman on the completion of corrective action plans).

*Louisiana*

*Bills Enacted:* S.B. 807 (enacts the Consumer Choice Television Act, providing dispute resolution and emergency alert services).

*Other Legislation:* E.O. 88 (allows parties to appear for mediation conferences via telephone); H.B. 884 (requires the state to pay a portion of medical malprac-

tice costs in judgments, settlements, and final arbitration awards where claims are brought by indigent, nonpaying, or uninsured patients); H.B. 374 (provides qualifications for child custody mediators); S.B. 43 (provides for alternative remedies against healthcare providers).

### Maryland

*Bills Enacted:* None

*Other Legislation:* H.B. 1606 (authorizes deputies to engage in collective bargaining through specified labor organizations under specified circumstances; provides for binding arbitration in specified labor disagreements); H.B. 1528 (authorizes procurement officers to participate in mediation and, subject to conditions, agree to arbitration upon receipt of protests or contract claims from contractors); H.B. 1507 & H.B. 470 (require binding arbitration between specified employee organizations representing specified Baltimore city police officers and the City of Baltimore under specified circumstances); H.B. 1330 (requires a \$25 filing fee to petition in a circuit court for an order confirming an arbitration award; provides specified procedures concerning such a petition); H.B. 1336 (authorizes the Public Service Commission to engage in negotiation or mediation with a telephone company regarding the terms of an alternative form of regulation under specified circumstances); H.B. 1413 (authorizes district courts, under specified circumstances, to refer cases relating to peace orders to district court mediators at any time); H.B. 1427 & S.B. 321 (authorize the creation of a state debt of less than \$175,000 to be used for the construction and renovation of a community mediation building); H.B. 1341 (authorizes a nonprofit association to institute, defend, intervene, or participate in governmental proceedings and alternative dispute resolution under specified circumstances); H.B. 577 (provides that any provision in a contract with a consumer that requires the waiver of a trial by jury is void and unenforceable unless preempted by federal law; defines consumer to include parties to an arbitration agreement); H.B. 205 (requires a successor beer manufacturer to give specified notice to a surviving beer distributor before termination of agreements, negotiations, payments, or mediation under certain circumstances).

### Massachusetts

*Bills Enacted:* H.D. 4830 (relates to resolutions of collective bargaining agreement disputes); S.D. 2588 (submits a Joint Labor Management Committee report relating to dispute resolution).

*Other Legislation:* H.B. 5047 (creates interagency review teams to ascertain the needs of individual children and provides a related dispute resolution process); S.D. 2788 (relates to interest arbitration).

### Michigan

*Bills Enacted:* None

*Other Legislation:* H.B. 6615 (provides for the establishment of a program to prevent home foreclosures and for mediation of foreclosure proceedings); S.B. 1425 (revises reference to domestic relations mediation in Child Custody Act to include alternative dispute resolution so as to better reflect an amendment to the



Friend of the Court Act); H.B. 6236 (establishes a ninety-day mediation program for mortgage foreclosures); H.B. 6112 (provides for binding arbitration for county corrections officers).

Minnesota

*Bills Enacted:* None

*Other Legislation:* H.F. 4250 & S.F. 3881 (creates an ombudsman position relating to natural resources); H.F. 4119 & H.F. 4049 (establish Ombudsman for Patient Advocacy); H.F. 4035 & H.F. 3738 (modify commerce-related arbitration procedures); H.F. 4042 (modifies an ombudsman for managed care provision relating to human services); H.F. 3576 & S.F. 3225 (authorize the Ombudsman and Medical Review Subcommittee to gather data about deceased clients); H.F. 3365 & S.F. 2948 (repeal final offer total package arbitration procedures for professional firefighters); S.F. 2973 & H.F. 3238 (create Pollution Control Agency Ombudsman position for groundwater pollution education and assistance); H.F. 3212 (provides for arbitration in disputes over competing video programming).

Mississippi

*Bills Enacted:* None

*Other Legislation:* S.B. 2777 (requires dispute resolution mechanisms in health insurance contracts); H.B. 743 (prohibits certain practices in connection with high cost home loans including mandatory arbitration clauses); S.B. 2745 (provides for dispute resolution relating to the State Health Insurance Exchange); H.B. 1258 (requires students to receive instruction in certain areas, including conflict resolution); H.B. 1276 (provides that arbitration clauses in contracts between sellers or providers and citizens are nonbinding); H.B. 1379 & S.B. 2833 (enact Mississippi Health Insurance Exchange Act, which provides for dispute resolution in certain circumstances); H.B. 326 (requires pursuit of mediation in all civil litigation).

Missouri

*Bills Enacted:* None

*Other Legislation:* None

Montana

*Bills Enacted:* None

*Other Legislation:* M.D. 717 (provides that the Police Arbitration Act covers deputy sheriffs).

Nebraska

*Bills Enacted:* L.R. 313 (creates a study to examine the need for uniform voluntary dispute resolution procedures for disputes between railroads and construction entities); L.B. 959 (provides funding for mediation of tax valuation appeals).

*Other Legislation:* L.B. 1159 (provides for mediation relating to truancy and parenting plans); L.B. 1110 (allows property tax valuation disputes to be heard by

mediators or arbitrators, or handled by other methods of alternative dispute resolution); L.B. 1146 (amends School Employees Retirement Act to recognize arbitration-ordered wages as “compensation” under the Act); L.B. 1153 (compels the Nebraska Board of Education to establish a parent guide explaining a mediation process for disputes relating to a child’s evaluation for special education programs); L.B. 936 (establishes arbitration procedures for disputes arising out of contribution calculations for nonmember employees); L.B. 897 (establishes the State Property Taxpayer Referee Division and requires all employees of the Division to be trained in alternative dispute resolution).

### Nevada

*Bills Enacted:* None

*Other Legislation:* B.D.R. 331 (clarifies provisions relating to the appointment and duties of the Nevada Long-Term Care Ombudsman); B.D.R. 405 (allows local governments to resolve certain contractual disputes by processes other than arbitration).

### New Hampshire

*Bills Enacted:* S.B. 542 (authorizes mediated settlements of disputed ownerships of particular lands in the town of Rye); H.B. 1634 (concerns mediation for autistic individuals and their families).

*Other Legislation:* L.S.R. 62 (concerns dispute resolution for public employees).

### New Jersey

*Bills Enacted:* None

*Other Legislation:* A.B. 2339 & S.B. 623 (require development of a policy concerning the use of alternative dispute resolution in state agencies; expand the Dispute Settlement Office of Department of Public Advocate); A.B. 2152 (expands the categories of propositions that counties or municipalities may submit in a non-binding referendum); A.B. 2157 (provides that judgments of County Board of Taxation and Tax Court will be binding on taxpayers); A.B. 2209 & S.B. 917 (provide arbitration for certain non-teaching school staff); A.B. 2243 (establishes timeframes for certain arbitration procedures); S.B. 657 (requires binding arbitration in contract disputes between hospitals and health insurance carriers); A.B. 367 (provides for binding arbitration for dismissals or reductions in salary for tenured professors at county colleges); S.B. 309 (establishes community dispute resolution); S.B. 310 (establishes alternative dispute resolution procedures for disputes regarding homeowners’ statutory liens); A.B. 1829 (revises current Police and Fire Compulsory Arbitration law); S.B. 1587 (provides for non-state-funded dispute resolution for community associations); A.B. 167 (eliminates the Department of the Public Advocate and provides for relocation of some ombudsmen from the Department); S.B. 1982 (creates an ombudsman for injured workers in the Department of Labor and Workforce Development); A.B. 2972 (establishes a random selection process for Public Employment Relations Commission arbitrators); A.B. 2971 (requires arbitrators appointed to the Public Employment Rela-

tions Commission to file annual financial disclosure statements); S.B. 1028 (enacts New Homebuyers' Bill of Rights Act); A.B. 3104 (relocates the duties of the Smart Growth Ombudsman to the Department of Economic Development and Regulatory Affairs); S.B. 1587 (establishes dispute resolution program for community associations).

### New Mexico

*Bills Enacted:* None

*Other Legislation:* H.M. 29 (encourages New Mexico congressional delegation to support the Federal Employee Free Choice Act); E.O. 64 (requires the General Services Department to act as the representative for the Regional Universal Agreement to Mediate between New Mexico and the EEOC).

### New York

*Bills Enacted:* S.B. 7752 (provides for non-binding mediation when a party objects to a decision regarding life-sustaining treatment for a mentally retarded person); S.B. 8143 (gives a delinquent borrower at least ninety days to meet with a credit counseling agency to discuss alternatives to foreclosure).

*Other Legislation:* A.B. 10134 (repeals paragraph of the civil service law relating to limitations provisions as to binding arbitration for members of the state police); A.B. 6910 (provides for use of binding arbitration in front of three-member panel for employee organizations); A.B. 9719 (provides for binding arbitration for security hospital treatment assistants in the office of mental health); S.B. 6717 (provides that public employee discipline is a mandatorily negotiable term and condition of employment, and that discipline provisions in arbitration agreements between public employers and public employee organizations are valid and enforceable); A.B. 11763 (sets a time limit for requesting full board review of unanimous board panel decisions regarding worker's compensation); A.B. 11737 (allows hospital and health care plans to enter into mutually agreed upon alternative dispute resolution methods for resolving disputes between them); S.B. 8422 (provides for arbitration of disputes in private construction contracts); S.B. 8335 (binding arbitration for security services collective bargaining unit members); A.B. 11391 (establishes a crime victim's ombudsman); A.B. 11124 (establishes alternative arbitration procedures for buyers of under-producing or under-performing seeds); A.B. 10815 (sets pre-arbitration time limits for arbitrations involving public employers and public employees); A.B. 9898 (mandates that arbitration panels take note of workers of the Triborough Bridge).

### North Carolina

*Bills Enacted:* None

*Other Legislation:* S.B. 2111 (appropriates funds for the Mediation Network of North Carolina); S.B. 2064 (creates a fee services for the open government mediation unit).

North Dakota

*Bills Enacted:* None

*Other Legislation:* None

Ohio

*Bills Enacted:* H.B. 323 (allows landowners to request and provides procedures for binding arbitration in livestock-fencing disputes); H.B. 416 (provides for dispute resolution procedures concerning the Great Lakes-St. Lawrence River Basin compact); H.B. 562 (provides that state auditor independent accountant services contracts may include binding arbitration provisions); H.B. 138 (allows courts to perform mediation in foreclosure actions); H.B. 332 (provides that partnership agreements may include arbitration provisions); H.B. 125 (provides that disputes between parties to healthcare contracts may be submitted to arbitration, and provides procedures for such arbitrations).

*Other Legislation:* E.O. 46 (requires agencies to review existing rules and processes and designates staff as ombudsman); S.B. 351 (authorizes Interstate Commission on Educational Opportunities for Military Children to provide for dispute resolution among member states); S.B. 275 (provides that disputes involving home improvement contractors may be submitted to arbitration and procedures for such arbitrations); S.B. 232 (requires the Director of Job and Family Services to create a dispute resolution process for persons seeking family child care home licenses); S.B. 57 (prohibits the Department of Education from making payments to applicants for first time special education scholarships while mediations regarding the children's educations are pending); H.B. 257 (provides that disputes involving home inspection contractors may be submitted to arbitration and procedures for such arbitrations).

Oklahoma

*Bills Enacted:* S.B. 2046 (provides standards as to appeals to the Merit Protection Commission and for the appointment of an administrative law judge to hear the case); S.B. 1839 (provides that the Uniform Arbitration Act will not apply to collective bargaining agreements and contracts which reference insurance except contracts between insurance companies); H.B. 2370 (establishes budgetary provisions relating to the Merit Protection Commission); S.B. 1428 (provides for arbitration under the Uniform Insurers Liquidation Act if reinsurer unreasonably withholds agreement).

*Other Legislation:* S.B. 1925 (directs the Oklahoma Health Care Authority to mediate in certain formal dispute resolution process); H.B. 2823 (provides appropriations from the Supreme Court Revolving Fund for the operation of the alternative dispute resolution system); S.B. 1852 (provides for the unenforceability of certain agreements under the Uniform Arbitration Act); S.B. 1590 (provides for ombudsman positions relating to environment and natural resources); H.B. 2468 (requires mediation upon the filing of a petition for grandparent visitation); H.B. 2371 (establishes budgetary provisions relating to the Merit Protection Commis-

sion); S.B. 1240 (establishes budgetary provisions relating to the Merit Protection Commission).

Oregon

*Bills Enacted:* None

*Other Legislation:* None

Pennsylvania

*Bills Enacted:* None.

*Other Legislation:* H.R. 911 (designates October 16, 2008, as “Conflict Resolution Day” in Pennsylvania); H.R. 808 (welcomes the 2008 National Conference of the United States Environmental Protection Agency Small Business Ombudsman and the State Small Business Ombudsman and State Small Business Environmental Assistance Programs, held June 16–20, 2008, to Pennsylvania); S.B. 1415 (amends the Public School Code of 1949 to provides for dispute resolution relating to the education of exceptional children); H.B. 2536 (amends the Public School Code of 1949 to provide for dispute resolution relating to the education of exceptional children, and to create an independent Board of Dispute Resolution to administer that system of dispute resolution); S.B. 1330 (establishes the Coal Methane Review Board to resolve disputes between property owners over the location of coal bed methane wells and access roads).

Rhode Island

*Bills Enacted:* H.B. 7687 & S.B. 2219 (give the Housing Resources Commission the power to administer the supportive services program which aids in the prevention of homelessness; addresses conflict resolution); S.B. 2320 (makes technical changes concerning the municipal courts as a result of the recent creation of the position of chief magistrate of the traffic tribunal).

*Other Legislation:* H.B. 8166 (amends the current Certificate of Need Review process required for new health care equipment and new institutional health services to incorporate elements of mediation into the hearing process and call for health care providers to demonstrate cooperation and collaboration with other health care providers and/or educational institutions as part of the application and review process); H.B. 8121 (affects the rules requiring firefighter arbitration); H.B. 8122 (revises the Municipal Police Arbitration Act; prohibits collective bargaining agreements from requiring the utilization of a particular health care insurance); S.B. 2761 (would revise the process as to arbitrations of municipal employees law); H.B. 7603 & H.B. 7668 (revise municipal employees’ grievance and interest in arbitration laws to establish specific factors to be considered by arbitration boards when deciding an arbitrators’ central cases); H.B. 7663 & S.B. 2147 (provide that in firefighters’ arbitrations, the rights and benefits conferred on employees by expiring collective bargaining agreements would continue until new agreements are ratified); H.B. 7666 (establishes arbitration-related law in conjunction with the board’s power to examine unfair labor practices); HB 7667 & S.B. 2559 (provide, in police arbitration, for contractual benefits in effect under a predecessor agreement, to continue when a successor collective bargaining agreement

has not been agreed to by the parties); H.B. 7569 (provides training programs in specified school districts for teaching students nonviolent conflict resolution and train school staff to promote the same, as well use mediation techniques); H.B. 7577 (prohibits housing aid from being used toward costs of mediation); S.B. 2584 (provides for the state to pay the total cost of compulsory mediation for school teachers); S.B. 2579 (provides for the payment of certain costs pertaining to compulsory mediation); S.B. 2580 & H.B. 7380 (requires the state to pay the cost of compulsory mediation involving municipal employees); H.B. 7426 & S.B. 2294 (acknowledge arbitration as the preferred alternative labor dispute resolution mechanism; limit instances when an arbitration award can be vacated); H.B. 7336 (provides guidelines for arbitration of motor vehicle accident claimants); H.B. 7194 (removes the \$5,000 cap on the payment of mediation expenses by the state pertaining to unresolved issues that are submitted to compulsory mediation between the negotiating or bargaining agent and the school committee); H.B. 7108 (prohibits certain public employees from entering into collective bargaining agreements or accepting arbitration awards containing language specifically identifying certain insurance companies); H.B. 7013 (expands the scope of the binding arbitration process as to educational employees and streamlines the arbitration process itself).

#### South Carolina

*Bills Enacted:* None

*Other Legislation:* S.B. 989 (enacts the Cable Antidiscrimination and Dispute Resolution Act).

#### South Dakota

*Bills Enacted:* H.B. 1099 (requires courts to order mediation to assist the parties concerning parenting plans in custody or visitation disputes between parents).

*Other Legislation:* S.B. 1246 (provides for a public records dispute resolution procedure); H.B. 1095 (adopts the South Dakota Family Law Arbitration Act); H.B. 1099 (requires custody or visitation dispute mediation under certain circumstances).

#### Tennessee

*Bills Enacted:* S.B. 4157 (clarifies that the Attorney General's Office may disclose otherwise confidential information when necessary in the course of a legal proceeding, including arbitration, related to the Tennessee Tobacco Manufacturers' Escrow Fund Act or the Tobacco Master Settlement Agreement); S.B. 3642 (revises provisions as to required training in special education law for mediators and administrative law judges); H.B. 3630 (requires the Administrative Office of the Courts to consider need when allocating funds for mediation centers); H.B. 2790 (urges public schools to include the use of nonviolence as a means of conflict resolution within character education); H.B. 3044 (provides that filing a marital dissolution agreement and a parenting plan removes a requirement to mediate); H.B. 2538 (expands the reasons a court may waive or extend the mediation requirement for parties in a divorce or separate maintenance proceeding).

*Other Legislation:* H.B. 4113 (clarifies that the Attorney General's Office may disclose otherwise confidential information when necessary in the course of a legal proceeding, including arbitration, related to the Tennessee Tobacco Manufacturers' Escrow Fund Act or the Tobacco Master Settlement Agreement); H.B. 4053 (authorizes the use of arbitration agreements by and on behalf of patients in long-term care facilities); H.B. 3636, H.B. 3637 & S.B. 3275 (creates ombudsperson offices within the Open Meetings Law and the Open Records Law); S.B. 3323 (requires the Administrative Office of the Courts to consider need when allocating funds for mediation centers); H.B. 3485 (revises provisions as to required training in special education law for mediators and administrative law judges); H.B. 2851 & S.B. 3205 (require that both parents attend a parent-educational seminar within certain time limits before participating in court-ordered parenting plan mediation); H.J.R. 765 (urges Congress to pass the Employee Free Choice Act); S.B. 2921 (requires public schools to provide instruction on nonviolence as means to conflict resolution as part of character education curriculum); S.B. 2662 (expands the reasons a court may waive or extend the mediation requirement for parties in a divorce or separate maintenance proceeding).

Texas

*Bills Enacted:* None

*Other Legislation:* None

Utah

*Bills Enacted:* H.B. 464 (modifies the duties of the Office of the Property Rights Ombudsman); H.B. 467 (amends insurance code provisions relating to the use of arbitration in third party motor vehicle accident cases); H.B. 341 (creates Underground Facilities Damage Dispute Board to arbitrate disputes involving excavation).

*Other Legislation:* H.B. 191 & S.B. 249 (relate to medical malpractice arbitration); H.B. 415 (requires that parents participate in a dispute resolution proceeding in certain circumstances of joint custody disputes); S.B. 269 (requires the Office of the Property Rights Ombudsman to provide information concerning water rights to water rights owners).

Vermont

*Bills Enacted:* None

*Other Legislation:* H.B. 729 (creates the Office of the State Palliative Care Ombudsman and directs the Hospice and Palliative Care Council of Vermont to implement a consumer outreach and education initiative on patients' rights and options in choosing end-of-life care).

Virginia

*Bills Enacted:* H.B. 1131 & S.B. 315 (creates the Office of the Children's Ombudsman to provide child-related investigative and educational services).

*Other Legislation:* H.B. 1591 (establishes the Office of the State Ombudsman to investigate citizen complaints alleging fraud, waste, or abuse of state property or resources); H.J.R. 101 (directs the Joint Commission on Health Care to study the use of disclosures, apologies, and alternative dispute resolution in cases of medical errors and adverse medical outcomes); S.B. 161 (authorizes employers primarily engaged in the construction business to negotiate dispute resolution systems with employee representatives).

### Washington

*Bills Enacted:* H.B. 3002 (requires the bargaining representatives for the state and the bargaining unit to attempt to agree on an interest arbitration panel to be used if parties' collective bargaining agreement negotiations are not successful); H.B. 2902 (relates to the collection of a Lemon Law arbitration fee upon initial registration of new motor vehicles in state); S.B. 6206 (requires that near fatalities of children under the care of or receiving services from the state be reported to the Office of the Family and Children's Ombudsman within one year).

*Other Legislation:* H.B. 3332 (provides that if parties to higher education collective bargaining agreements, who have engaged the mediation or fact-finding services of the public employment relations commission, have not reached agreement by October 1, the governor shall submit a request for funds); S.B. 6744 (requires the Department of Community Trade and Economic Development to conduct a study to determine the efficacy of creating a state run Homeowners' Association Ombudsman Office); S.B. 6618 (provides for the arbitration of bargaining between the state and the Washington State Patrol); S.B. 6209 (requires notification of Office of Family and Children's Ombudsman in cases involving multiple reports of child abuse or neglect).

### West Virginia

*Bills Enacted:* S.B. 780 (revises the Public Employee Grievance Procedure, removing mediation-arbitration and adding private arbitration); H.B. 4619 (requests the Supreme Court of Appeals to consider collaborative law procedures, specifically relating family law proceedings).

*Other Legislation:* S.B. 780 (amends the State Public Employee Grievance Procedure, deleting mediation-arbitration and adding private arbitration); H.B. 4451 (creates a permitting information ombudsman in the Governor's Office of Technology); S.C.R. 4 (urges Congress to pass the Employee Free Choice Act); S.B. 76 (relates to the creation of the Office of Family and Foster Child Protection Ombudsman); H.B. 2039 (prohibits the use of mandatory arbitration clauses in consumer loan agreements by regulated consumer lenders in the state).

### Wisconsin

*Bills Enacted:* A.B. 685 (provides that mediators shall review with the parties non-financial provisions that must be included in parenting plans, and allows court waivers of mediation).

*Other Legislation:* S.B. 406 (relates to child support, divorce, mediation, and child care arrangements in domestic proceedings); A.B. 664 (relates to the autho-



rization of access for long-term care ombudsmen or their representatives to clients and residents in residential care apartment complexes).

*Wyoming*

*Bills Enacted:* None

*Other Legislation:* H.B. 115 (provides for arbitration or mediation for disputes between members of homeowner associations).