

2022

## State Legislative Update

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### Recommended Citation

Katey Peters, Caleb Rutledge, Tim Richard, and Joel Smith, *State Legislative Update*, 2022 J. Disp. Resol. (2022)

Available at: <https://scholarship.law.missouri.edu/jdr/vol2022/iss1/12>

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## STATE LEGISLATIVE UPDATE

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The State Legislative Update is compiled and written annually by the Journal of Dispute Resolution’s Associate Members under the direction of the Associate Editor in Chief. It is designed to provide readers with a listing of pertinent legislation affecting the field of alternative dispute resolution (“ADR”) and a more detailed look at certain bills because of their importance or novelty within the field. This year’s State Legislative Update is especially important because the operations of state legislatures were altered due to the COVID-19 Pandemic.\*\*

### I. STATE LEGISLATIVE FOCUS SECTION

#### Protecting those Going through the Mediation Process

Bill Number: Florida House Bill 441

Bill Status: Passed and approved by Governor; Effective July 1, 2021

Bill Number: Georgia Senate Bill 234

Bill Status: Passed and approved by Governor; Effective July 1, 2021

### I. Introduction

Mediation typically serves to protect both parties by allowing each party to use their own self-determination, with the help of an impartial mediator, to reach a mutual agreement.<sup>1</sup> A mediator is required to be impartial and withdraw from mediation if the mediation cannot

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\*\* If you have any comments or suggestions about the annual State Legislative Update, please email the *Journal of Dispute Resolution* Editorial Board at [umclawjournal@missouri.edu](mailto:umclawjournal@missouri.edu).

<sup>1</sup> Nancy A. Garris, 21 *Mo. Prac. Series, Family Law* § 26.11 (3d. ed. 2021). While mediation is used to serve the self-determination of both parties, either party may terminate court ordered mediation after two hours of mediation.

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be conducted free of bias.<sup>2</sup> The ABA Model Standards for the Conduct for Mediators includes: (1) preserving of self-determination by the parties; (2) declining mediation if she/he cannot conduct it in an impartial manner; (3) avoiding conflicts of interest during and after a mediation; (4) maintaining the necessary competence to satisfy the reasonable expectation of the parties to the mediation; (5) maintaining confidentiality of all information obtained in a mediation; (6) maintaining the quality of the mediation process by promoting diligence, timeliness, safety, procedural fairness, mutual respect, party competence, and party participation; (7) providing accurate information regarding reasonable fees and other charges; (8) maintaining truthful advertising regarding mediator's qualifications, experience, services, and fees; and (9) avoiding the unethical advancement of mediation practice.<sup>3</sup>

Mediation is typically less formal and more voluntary than a formal court proceeding with neither party being required to reach an agreement during the mediation.<sup>4</sup> This can have advantages and disadvantages for both parties. This Legislative update summarizes and analyzes two pieces of legislation that were meant to establish basic components of mediation for their respective states, including the rights of those undertaking the process. The analysis will then focus on the advantages and disadvantages to mediation generally and relate those advantages and disadvantages to the proposal of Florida House Bill 441 and Georgia Senate Bill 234.

## II. Florida House Bill 441

Florida House Bill 441 was filed on January 25, 2021 and first read in the House on March 2, 2021.<sup>5</sup> The bill is sponsored by Republican Representative Brett Hage.<sup>6</sup> Florida House Bill 441 was passed in the house on April 21, 2021 with a unanimous 119-0 vote.<sup>7</sup> The Bill was then passed in the Senate on April 26, 2021 with a unanimous 40-0 vote.<sup>8</sup> Florida House Bill 441 was then approved by the governor on June 4, 2021 and officially passed and made into law on June 9, 2021.<sup>9</sup> The provisions of the Bill took effect on July 1, 2021.<sup>10</sup>

Prior to its approval, the bill went through the House through the Civil Justice & Property Rights subcommittee and Children, Families, & Seniors subcommittee beginning on February 8, 2021.<sup>11</sup> The bill was favorable to both committees and then sent to the Judiciary Committee on March 30, 2021, where the bill was also favorable.<sup>12</sup> The bill was first read to the House on April 7, 2021 and passed after three readings on April 21, 2021.<sup>13</sup> The Senate

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<sup>2</sup> *Id.*

<sup>3</sup> ABA, *Dispute Resolution Processes, Mediation*, [https://www.americanbar.org/groups/dispute\\_resolution/resources/disputeresolutionprocesses/mediation/](https://www.americanbar.org/groups/dispute_resolution/resources/disputeresolutionprocesses/mediation/) (last visited Dec. 27, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> CS/CS/H.B. 441, 27th Leg., 1st Sess. (Fla. 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> CS/CS/H.B. 441, 27th Leg., 1st Sess. (Fla. 2021).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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received the bill on April 21, 2021 and passed the bill after three readings on April 26, 2021.<sup>14</sup> The bill was then presented to the Governor on June 3, 2021 before its approval on June 4, 2021.<sup>15</sup>

Florida House Bill 441 can be summarized as authorizing courts to appoint eldercare coordinators and to refer certain parties to the coordination.<sup>16</sup> The Bill also specifies when consent is required, the duration of the coordination, and it establishes mechanisms for reviewing the appointed coordination.<sup>17</sup> The Bill establishes the qualifications for eldercare coordinators, various screening processes of the coordinators, and authorizes the courts to award fees and costs, which may under some circumstances be determined on the parties' ability to pay.<sup>18</sup> Lastly, the Bill establishes certain communications between parties and eldercare coordinators as confidential and provides immunity from liability for eldercare coordinators under specified circumstances including if the coordinator was acting within his or her duties and appointed functions unless the person acted in bad faith.<sup>19</sup>

### III. Georgia Senate Bill 234

Georgia Senate Bill 234 was introduced in the Senate on February 23, 2021.<sup>20</sup> The bill is sponsored by Republican Senators John Kennedy, Brian Strickland, Ben Watson, and Rob Leverett and Democrat Senators Elena Parent and Harold Jones.<sup>21</sup> Georgia Senate Bill 234 was passed on May 10, 2021 after it was signed by the Governor.<sup>22</sup> The bill was set to take effect on July 1, 2021.<sup>23</sup>

Prior to its approval, the bill went through a Senate Substitute and was favorably reported on March 3, 2021.<sup>24</sup> The Senate passed the bill after three readings with a vote of 49-2 on March 8, 2021.<sup>25</sup> The Bill was first read in the House on March 9, 2021 and the House committee favorably reported the Bill on March 18, 2021.<sup>26</sup> The Bill was then passed in the House with a vote of 159-6 on March 25, 2021 before being sent to the Governor on April 7, 2021.<sup>27</sup> The Governor then approved and signed the Bill, creating Act 268, on May 20, 2021.<sup>28</sup>

Georgia Senate Bill 234 can be summarized as providing a uniform law for mediation to establish definitions, specify privileges against disclosure, admissibility, and discovery, specifies waivers, privileged preclusions, and exceptions, establishes required

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> CS/CS/H.B. 441, 27th Leg., 1st Sess. (Fla. 2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 2021 Georgia Laws Act 268 (S.B. 234).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> 2021 Georgia Laws Act 268 (S.B. 234).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

disclosures for conflicts with the mediator, and establishes standards for international commercial mediation and electronic signatures.<sup>29</sup>

#### IV. Analysis

Florida House Bill 441 and Georgia Senate Bill 234 both establish general guidance for mediation, but each bill varies in the group of people the bill targets. The main areas of mediation that both bills address include privileges with mediation, what information is held to be confidential from the mediation, and other standards for mediation. Both of these bills show a trend towards one common theme - a push to use mediation rather than the formal court system. An analysis of the two bills in addition to outside research will show the reasons mediation may be more beneficial than the more formal court system while also pointing out the downsides and circumstances where the more formal court system may be better suited than mediation. Confidentiality and privilege within a mediation go hand in hand and will be analyzed as they both benefit mediation, yet may be a risk and how these costs/benefits are accounted for in the legislation.

Confidentiality in mediation facilitates settlements that are not only more fair but also more satisfying to both parties in the dispute.<sup>30</sup> Confidentiality allows the disputants to discuss all parts of their case in front of a neutral mediator.<sup>31</sup> There are benefits and costs to mediation as a result of this confidentiality, and it is up to the parties and attorneys to decide if the benefits of mediation outweigh the benefits of using the court system.

Three of the biggest benefits to mediation privilege include candor, fairness to the disputants, and privacy.<sup>32</sup> The confidentiality in mediation allows the parties to admit facts that would likely not be provided in a formal court proceeding.<sup>33</sup> In addition, mediation participants cannot have their statements bound to them in a court proceeding, removing the risk of unfairly prejudicial use of information, especially if the participants do not have an equal level of power outside of the mediation.<sup>34</sup> Lastly, confidentiality through mediation privilege allows both parties to settle a dispute quietly and informally, which may keep private information out of the public eye.<sup>35</sup>

The two biggest costs or downfalls of mediation privilege include a loss of evidence and a loss of information.<sup>36</sup> The loss of information refers to the judicial system where there are generally four areas of concern due to policies favoring disclosure.<sup>37</sup> First, the disclosure of information to the court regarding compliance with the court's order for mediation.<sup>38</sup> Second, information to help better understand the mediation agreement if there is a dispute

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<sup>29</sup> *Id.*

<sup>30</sup> Burr, A.M., *Confidentiality in Mediation Communication: A Privilege Worth Protecting*, 57(1) DISP. RESOL. J. 64, 66 (2002).

<sup>31</sup> *Id.* at 66.

<sup>32</sup> *Id.* at 67.

<sup>33</sup> *Id.* at 66.

<sup>34</sup> *Id.* at 67.

<sup>35</sup> *Id.* at 68.

<sup>36</sup> Burr, *supra* note 30 at 68.

<sup>37</sup> *Id.* at 68.

<sup>38</sup> *Id.*

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between the parties to the mediation about a key provision.<sup>39</sup> Third, information relevant to raise any defenses to the enforceability of the mediation provision.<sup>40</sup> Lastly, information related to malpractice by the mediator during the mediation between the parties.<sup>41</sup> The costs or downfalls must be weighed against the benefits for mediation privilege to decide the best process for the client and the case.

**V. Conclusion**

After comparing the two bills, the benefits and costs of mediation are shown. Uniformity in mediation allows both clients and attorneys to have clear expectations of one another, and both Florida House Bill 441 and Georgia Senate Bill 234 are establishing guidance to allow for a more uniform mediation process. Clients and advocates must continue to weigh both the costs and benefits when deciding what is best for the outcome of their case.

**Alleviating Familial Fractures Revealed From the COVID-19 Pandemic**

Bill Number: Pennsylvania House Bill 1366

Bill Status: Referred to Judiciary Committee on 5/10/21.<sup>42</sup>

Bill Number: Pennsylvania House Bill 1392

Bill Status: Referred to Judiciary Committee on 5/10/21.<sup>43</sup>

Bill Number: South Dakota House Bill 1241

Bill Status: No Motion to Reconsider H.J. 355 on 2/23/21<sup>44</sup>

Bill Number: Washington House Bill 1320 & Senate Bill 5297

Bill Status: Signed by Governor on 5/10/21.<sup>45</sup>

Bill Number: Wisconsin Assembly Bill 101 & Senate Bill 107

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Bill Information: House Bill 1366*, Pa. Gen. Assem. (last visited July 21, 2021), <https://www.legis.state.pa.us/CFDOCS/billInfo/billInfo.cfm?year=2021&sInd=0&body=H&type=B&bn=1366#:~:text=Last%20Action%3A,10%2C%C2%A02021%20%5BHouse%5D>.

<sup>43</sup> *Bill Information: House Bill 1366*, Pa. Gen. Assem. (last visited July 21, 2021), <https://www.legis.state.pa.us/CFDOCS/billInfo/billInfo.cfm?year=2021&sInd=0&body=H&type=B&bn=1366#:~:text=Last%20Action%3A,10%2C%C2%A02021%20%5BHouse%5D>.

<sup>44</sup> H.B. 1241, S.D. Leg. (last visited July 21, 2021), <https://sdlegislature.gov/Session/Bill/22442#:~:text=02/23/2021,N/A>.

<sup>45</sup> H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021).

Bill Status: Published as Law on 5/22/21/<sup>46</sup>

## I. Introduction

Even prior to a modern-day pandemic, compared with most other western nations, the United States has one of the highest marriage and divorce rates.<sup>47</sup>

“I think some people went into lockdown thinking: ‘Oh, isn’t this going to be lovely! We’re going to spend lots of quality time together. And my partner, who’s normally in the city or commuting – they’ll be around, and they’ll help more. And I think the reality for many has been a far cry from that.’”<sup>48</sup>

New York divorce attorney Nancy Chemtob said, only a few months into the COVID-19 pandemic, that she began waking up at 3 a.m. to handle all of the clients who wanted out of their marriages.<sup>49</sup> This appears to have been, at least in part, because the coronavirus crisis has inspired a surge of divorces in the United States, China, Britain, and Sweden.<sup>50</sup>

Determining the exact reasons for this sudden surge may perhaps be served only by mere speculation, but some theories appear to ring true: job loss;<sup>51</sup> stress from parenting kids through remote learning;<sup>52</sup> the pandemic’s taking away of “well-established routines that offered comfort, stability and rhythm”;<sup>53</sup> and, most introspectively, people simply having more time to think about their desires for the present and future.<sup>54</sup> Finally, and to no surprise, as it is one of the common causes of marital strife: money.<sup>55</sup>

Estimating the average financial costs of divorce requires less speculation than why divorce rates were affected by the pandemic. Many sources agree that the average financial cost of divorce in America is \$12,900.<sup>56</sup> But most Americans, after all, are not like former

<sup>46</sup> S.B. 107, 105th Leg., Biennial Sess. (Wis. 2021).

<sup>47</sup> Russell Heimlich, *The Marrying — and Divorcing — Kind*, PEW RESEARCH CTR. (Jan. 14, 2011), <https://www.pewresearch.org/fact-tank/2011/01/14/themarrying-and-divorcing-kind/>.

<sup>48</sup> Maddy Savage, *Why the Pandemic is Causing Spikes in Break-ups and Divorces*, B.B.C. (Dec. 6, 2020), <https://www.bbc.com/worklife/article/20201203-why-the-pandemic-is-causing-spikes-in-break-ups-and-divorces>.

<sup>49</sup> Courtney Rubin, *Manage Your Divorce Expectations*, N.Y. TIMES (Jan. 30, 2021), <https://www.nytimes.com/2021/01/30/at-home/manageyour-divorce-expectations.html>.

<sup>50</sup> *Id.*

<sup>51</sup> Katie Heaney, *Divorce is Down, But Will it Last? Four Recently Divorced People Talk About how Covid Impacted Their Marriages*, THE CUT (June 24, 2021), <https://www.thecut.com/2021/06/how-the-covid-pandemic-affected-marriages-and-caused-divorce.html>.

<sup>52</sup> *Id.*

<sup>53</sup> Savage, *supra* note 48.

<sup>54</sup> Heaney, *supra* note 51 (“People are thinking a lot about what matters to them, what they want in the world, what they tolerated living without that they don’t want to tolerate living without anymore.”).

<sup>55</sup> Savage, *supra* note 48.

<sup>56</sup> See Geoff Williams, *Cost Breakdown of a Divorce*, U.S. NEWS & WORLD REPORT (Dec. 21, 2020), <https://money.usnews.com/money/personal-finance/family-finance/articles/cost-breakdown-of-a-divorce>; see also Rubin, *supra* note 49; Christy Bieber, *The Average Cost of Divorce in 2020*, THE ASCENT (Nov. 16, 2020), <https://www.fool.com/the-ascent/research/average-cost-of-divorce/>; see also Olga Khazan, *The High Cost of Divorce*, THE ATLANTIC (June 23, 2021), <https://www.theatlantic.com/politics/archive/2021/06/why-divorce-so-expensive/619041/>, (saying attorneys’ fees alone to help with a divorce can cost \$10,000 to \$20,000).

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Missouri Governor Eric Greitens,<sup>57</sup> Bill and Melinda Gates,<sup>58</sup> or Jeff Bezos and MacKenzie Scott,<sup>59</sup> *i.e.*, most Americans do not have the financial feasibility to pay for even these fees.

Recognizing this, various states continue to create and amend legislation that may hopefully encourage amicable dissolutions. Most often, legislatures use legislation that encourages, or even requires, alternative dispute resolution, such as mediation,<sup>60</sup> before parties can obtain a final decree. Legislatures appear to wish parties use alternative dispute resolution during such contentious marital/family disputes because, by having parties settle matters themselves instead of a judge, the good effects that may result on the parties and, in some cases, their children will be maximized, and the bad minimized.

This Legislative Update Focus summarizes examples of those pieces of legislation as they relate to domestic relation disputes.

## II. Specific Bill Summaries

This section summarizes how the following pieces of legislation add to, remove, or modify current laws of Pennsylvania, South Dakota, Washington, and Wisconsin.

### a. Pennsylvania H.B. 1366

Pennsylvania House Bill 1366 was introduced to the Pennsylvania House floor on May 10, 2021.<sup>61</sup> The bill was introduced by Republican Representatives Kate A. Klunk,<sup>62</sup> Rosemary M. Brown,<sup>63</sup> Rob. W. Kauffman,<sup>64</sup> Jerry Knowles,<sup>65</sup> David R. Millard,<sup>66</sup> Tina Pickett,<sup>67</sup> Francis X. Ryan,<sup>68</sup> Paul Schemel,<sup>69</sup> and Todd Stephens.<sup>70</sup> The bill was referred to

<sup>57</sup> Katie Bernard, *Eric Greitens Announces Divorce two Years After Scandal, Sexual Misconduct Allegations*, K.C. STAR (May 20, 2020), <https://www.kansascity.com/news/politics-government/article241938771.html>.

<sup>58</sup> Rachel Sandler & Noah Kirsch, *How The Gates' Split Could Stack Up Against The Biggest Billionaire Divorces*, FORBES (May 3, 2021), <https://www.forbes.com/sites/rachelsandler/2021/05/03/how-the-gates-split-could-stack-up-against-the-biggest-billionaire-divorces/?sh=6ac38ced2841>, (“If Bill and Melinda did decide to split the fortune equally, Melinda would be worth \$65.25 billion[.]”).

<sup>59</sup> *Id.* (“MacKenzie Scott, Amazon founder Jeff Bezos’s ex-wife, . . . is worth \$59.8 billion . . .”).

<sup>60</sup> Erin McDowell, *The Average Cost of Getting Divorced is \$15,000 in the US — But Here’s Why it can be Much Higher*, BUSINESS INSIDER (Aug. 1, 2019), <https://www.businessinsider.com/average-cost-divorce-getting-divorced-us-2019-7> (“Mediation can save you money or add costs to your divorce, depending on how you use it. Mediators can sometimes be used in place of an attorney so you and your partner can civilly decide how you want to split up your assets and come to a settlement agreement without going to trial.”).

<sup>61</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>62</sup> For more on Rep. Klunk, see *Member Information: Kate A. Klunk*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1694](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1694).

<sup>63</sup> For more on Rep. R. Brown, see *Member Information: Rosemary M. Brown*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1200](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1200).

<sup>64</sup> For more on Rep. Kauffman, see *Member Information: Rob. W. Kauffman*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1022](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1022).

<sup>65</sup> For more on Rep. Knowles, see *Member Information: Jerry Knowles*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1193](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1193).

<sup>66</sup> For more on Rep. Millard, see *Member Information: David R. Millard*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1033](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1033).

<sup>67</sup> For more on Rep. Pickett, see *Member Information: Tina Pickett*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=97](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=97).



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the House Judiciary Committee the same day.<sup>72</sup> The purpose of the bill is to amend Title 42 of the Pennsylvania Consolidated Statutes to adopt the Uniform Family Law Arbitration Act.<sup>73</sup>

Pennsylvania is only one of several legislative bodies attempting to adopt the Uniform Family Law Arbitration Act.<sup>74</sup> Other legislative bodies attempting to adopt the UFLAA include the Council of the District of Columbia<sup>75</sup> and Massachusetts.<sup>76</sup> Montana,<sup>77</sup> North Dakota,<sup>78</sup> Arizona,<sup>79</sup> and Hawaii<sup>80</sup> have already enacted the UFLAA this year or in previous years.

The UFLAA can quickly be summarized as an act that permits the arbitration of many family law disputes.<sup>81</sup> The UFLAA does not, however, permit an arbitrator in such proceeding to: (1) grant a divorce or annulment; (2) terminate parental rights; (3) grant an adoption or a guardianship of a child or incapacitated individual; or (4) determine the status of a child relating to juvenile matters.<sup>82</sup> H.B. 1366 would also not permit the arbitration of a family law dispute if, among other things, the arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk.<sup>83</sup> Arbitrating otherwise permitted claims requires simply that the arbitration agreement: (1) be in a record signed by the parties; (2) identify the arbitrator, an arbitration organization or a method of selecting an arbitrator; and (3) identify the family law dispute the parties intend to arbitrate.<sup>84</sup>

Whereas the Federal Arbitration Act, and similar state versions, describes few, if any, qualifications on who may arbitrate such claims, H.B. 1366 limits clear arbitrator qualifications.<sup>85</sup> Absent the parties stipulating otherwise,<sup>86</sup> an arbitrator must be either: (1) an

<sup>68</sup> For more on Rep. Ryan, see *Member Information: Francis X. Ryan*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1750](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1750).

<sup>69</sup> For more on Rep. Schemel, see *Member Information: Paul Schemel*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1705](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1705).

<sup>70</sup> For more on Rep. Stephens, see *Member Information: Todd Stephens*, PA. H.R. (last visited July 22, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/House\\_bio.cfm?id=1221](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=1221).

<sup>71</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Family Law Arbitration Act*, UNIF. LAW COMM'N (last visited July 22, 2021), <https://www.uniformlaws.org/committees/communityhome?CommunityKey=ddf1c9b6-65c0-4d55-bfd7-15c2d1e6d4ed>. [hereinafter UFLAA].

<sup>75</sup> Legis. B. 93, Period 24 (D.C. 2021).

<sup>76</sup> H.B. 1630, 192nd Gen. Assemb., Reg. Sess. (Mass. 2021).

<sup>77</sup> S.B. 104, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>78</sup> S.B. 2063, 66th Leg., Reg. Sess. (N.D. 2019).

<sup>79</sup> See Ariz. S. Ct. Order R-17-0017 (2017). Notice the UFLAA was enacted by the judicial, rather than the legislative, body of the state.

<sup>80</sup> H.B. 1235, 27th Leg., Reg. Sess. (Haw. 2017).

<sup>81</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. § 7373(a) (Pa. 2021).

<sup>82</sup> *Id.* § 7373(b).

<sup>83</sup> See *id.* § 7382(b).

<sup>84</sup> *Id.* § 7375(a). Should it meet these requirements, the language of the bill suggests that the enforceability of the agreement would hold strong from other federal case law regarding arbitration. Compare *id.* § 7375(b) with 9 U.S.C. § 2 (1947) [part of the U.S. Code known as the "Federal Arbitration Act"].

<sup>85</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. § 7378(a) (Pa. 2021).

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attorney at law who is trained in domestic violence and child abuse; (2) a former attorney at law on inactive status who is trained in domestic violence and child abuse; or (3) a senior judge who is trained in domestic violence and child abuse.<sup>87</sup> Like other arbitrators, those appointed or hired pursuant to the UFLAA are permitted broad powers.<sup>88</sup> Tailored to the purpose of this Act, however, H.B. 1366 permits three interesting, specific powers; arbitrators may: (1) interview a child who is the subject of a child custody dispute;<sup>89</sup> (2) appoint an attorney, guardian ad litem or other representative for a child at the expense of the parties;<sup>90</sup> and (3) impose a procedure to protect a party or child from risk of harm, harassment or intimidation.<sup>91</sup> In addition to being protected by his or her broad grant of authority, arbitrators are further protected by (1) being immune from civil liability to the same extent as a judge of a court of Pennsylvania acting in a judicial capacity<sup>92</sup> and (2) potentially being awarded reasonable attorney fees and costs for suits brought in bad faith against arbitrators.<sup>93</sup>

Finally, in line with the standard practice of keeping confidential arbitration proceedings and information therefrom,<sup>94</sup> H.B. 1366 specifies that, unless the parties otherwise agree, these arbitration proceedings and awards are confidential.<sup>95</sup> The goal of protecting this privacy is furthered also by statutorily declaring arbitrators incompetent to testify and protecting them from liability for not producing records related to the arbitration proceedings.<sup>96</sup>

### b. Pennsylvania H.B. 1392

Pennsylvania House Bill 1392 was introduced to the Pennsylvania House floor on May 10, 2021.<sup>97</sup> The bill was introduced by Republican Representatives Stan Saylor,<sup>98</sup> Rosemary M. Brown,<sup>99</sup> Susan C. Helm,<sup>100</sup> Dawn W. Keefer,<sup>101</sup> Carrie Lewis DelRosso,<sup>102</sup>

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<sup>86</sup> *Id.* § 7378(b).

<sup>87</sup> *Id.* § 7378(a).

<sup>88</sup> *Id.* § 7383(c).

<sup>89</sup> *Id.* § 7383(c)(5).

<sup>90</sup> *Id.* § 7383(c)(12).

<sup>91</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. § 7383(c)(13) (Pa. 2021).

<sup>92</sup> *Id.* § 7395(a).

<sup>93</sup> *See id.* § 7395(e).

<sup>94</sup> *See* Richard C. Reuben, *Confidentiality in Arbitration: Beyond the Myth*, 54 U. KAN. L. REV. 1255 (2006) (“Confidentiality has long been part of the mythology of alternative dispute resolution (ADR). That is to say, one of the apparent virtues of ADR is that its processes have been viewed as confidential.”).

<sup>95</sup> H.B. 1366, 205th Gen. Assemb., Reg. Sess. § 7386(e) (Pa. 2021).

<sup>96</sup> *Id.* § 7395(d)(1).

<sup>97</sup> H.B. 1392, Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>98</sup> For more on Rep. Saylor, *see Member Information: Stan Saylor*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=200](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=200).

<sup>99</sup> For more on Rep. Brown, *see Member Information: Rosemary M. Brown*, *supra* note 22.

<sup>100</sup> For more on Rep. Helm, *see Member Information: Suscan C. Helm*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1107](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1107).

<sup>101</sup> For more on Rep. Keefer, *see Member Information: Dawn W. Keefer*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1748](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1748).

<sup>102</sup> For more on Rep. DelRosso, *see Member Information: Carrie Lewis DelRosso*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1898](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1898).

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David R. Millard,<sup>103</sup> Dan Moul,<sup>104</sup> Tina Pickett,<sup>105</sup> Greg Rothman,<sup>106</sup> Francis X. Ryan,<sup>107</sup> Jeff. C. Wheeland,<sup>108</sup> and David H. Zimmerman.<sup>109</sup> The bill was referred to the House Judiciary Committee the same day.<sup>110</sup> The purpose of the bill is to amend Titles 23 and 42, regarding Domestic Relations and Judiciary and Judicial Procedure respectively, of the Pennsylvania Consolidated Statutes in various ways.<sup>111</sup> The bill would create the new chapter 72 to be known and cited as the “Family Law and Justice Act.”<sup>112</sup>

One of the most substantial changes relevant to this Legislative Update is the bill’s removal of § 3901 of the current Pennsylvania Consolidated Statutes.<sup>113</sup> § 3901 relates to court-created mediation programs regarding domestic disputes under Parts IV<sup>114</sup> and VI<sup>115</sup> of Title 23 of the Pennsylvania Consolidated Statutes.<sup>116</sup> § 3901 is, simply put, being replaced by § 7222.<sup>117</sup>

§ 7222 would make three significant, notable changes in replacing § 3901. First, whereas § 3901 merely permitted mediation upon consent of the parties,<sup>118</sup> absent “good cause shown,”<sup>119</sup> all parties shall be referred to mandatory mediation for the resolution of custody disputes in accordance with the child’s best interest.<sup>120</sup> Second, though § 3901 has few, if any, requirements on the permissive mediation programs,<sup>121</sup> § 7222 explicitly requires the mandatory mediation programs to: (1) facilitate and encourage the parties to resolve custody disputes with the help of a neutral third party; (2) contain a mediation orientation program for the parties; and (3) be closed to the public and be confidential.<sup>122</sup> Third, while § 3901 prohibits mediation “where either party or child of either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action under this

<sup>103</sup> See *Member Information: David R. Millard*, *supra* note 25.

<sup>104</sup> For more on Rep. Moul, see *Member Information: Dan Moul*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1101](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1101).

<sup>105</sup> For more on Rep. Pickett, see *Member Information: Tina Pickett*, *supra* note 26.

<sup>106</sup> For more on Rep. Rothman, see *Member Information: Greg Rothman*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1733](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1733).

<sup>107</sup> For more on Rep. Ryan, see *Member Information: Francis X. Ryan*, *supra* note 27.

<sup>108</sup> For more on Rep. Wheeland, see *Member Information: Jeff. C. Wheeland*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1710](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1710).

<sup>109</sup> For more on Rep. Zimmerman, see *Member Information: David H. Zimmerman*, Pa. H.R. (last visited July 26, 2021), [https://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/house\\_bio.cfm?id=1711](https://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=1711).

<sup>110</sup> H.B. 1392, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* § 7201.

<sup>113</sup> *Id.* § 4.

<sup>114</sup> Part IV regards dissolution of marital status, property rights related to the marriage, and alimony and support. H.B. 1392, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>115</sup> *Id.* § 3901. Permits mediation regarding, as relevant to Part VI, child custody under Chapter 53.

<sup>116</sup> 23 PA. CONS. STAT. § 3901 (1996).

<sup>117</sup> See H.B. 1392, 2021 Gen. Assemb., Reg. Sess. § 7222 (Pa. 2021).

<sup>118</sup> 23 PA. CON. STAT. § 3901(b) (1996).

<sup>119</sup> Pa. H.B. 1392 § 7222(b)-(c). Mediation need not be required when there exists either: (1) a history of child abuse or neglect, child sexual abuse or exploitation or domestic violence by a party; or (2) evidence that parties are currently participating in private mediation.

<sup>120</sup> *Id.* § 7222(b).

<sup>121</sup> See 23 PA. CON. STAT. § 3901(a), (c)(1) (1996).

<sup>122</sup> Pa. H.B. 1392 § 7222(a).

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part or within 24 months preceding the filing of any action under this part,”<sup>123</sup> § 7222 at least appears to let parties make that choice despite such history of violence or neglect.<sup>124</sup>

Having recognized the barriers created by financial costs of adjudicating and otherwise resolving important family law disputes,<sup>125</sup> H.B. 1392 would require judicial districts to establish a sliding schedule to determine the fees for participating in mediation, based on a party’s ability to pay.<sup>126</sup> Further, and unless ordered otherwise, all parties split equally the fee of mediation services.<sup>127</sup>

In addition to generally requiring mediation, H.B. 1392 would support the goals<sup>128</sup> of the to-be-added chapter 72 through separating parents seminars<sup>129</sup> and, similarly, seminars for children of separating parents.<sup>130</sup> Separating parents seminars would, among other things, regard topics such as: (1) the procedural aspects of family litigation;<sup>131</sup> (2) basic child psychology and strategies to minimize the adverse effects of separation or divorce on children;<sup>132</sup> and (3) the potential benefits of mediation.<sup>133</sup>

### c. South Dakota H.B. 1241

South Dakota House Bill 1241 was introduced for its first reading on February 3, 2021.<sup>134</sup> H.B. 1241 was introduced by Representative Steven Haugaard, a Republican and attorney from Sioux Falls, South Dakota.<sup>135</sup> The bill was referred to the House of Representatives Education Committee on February 4, 2021.<sup>136</sup> The purpose of the bill is to add two new sections to Chapter 24-4<sup>137</sup> of the State’s Codified Laws.<sup>138</sup>

The first section to be added would mandate courts to require parents who have petitioned for divorce, and parents who have petitioned for child custody or visitation, to participate in a parent education program for a duration of at least four hours.<sup>139</sup> These parent education programs would be created to serve the purposes of helping the parents better understand: (1) the impact that divorce, the restructuring of the family, and judicial proceedings have upon children and the family; (2) methods for preventing parenting time

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<sup>123</sup> See 23 PA. CON. STAT. § 3901(c)(2) (1996).

<sup>124</sup> Pa. H.B. 1392 § 7222(c) (“A party *may* be excused from mediation or the mediation orientation program for good cause shown...”) (emphasis added).

<sup>125</sup> See *id.* § 7203(2), (5), (7).

<sup>126</sup> *Id.* § 7222(g).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* § 7203.

<sup>129</sup> *Id.* § 7224.

<sup>130</sup> Pa. H.B. 1392 § 7225.

<sup>131</sup> *Id.* § 7224(1).

<sup>132</sup> *Id.* § 7224(4).

<sup>133</sup> *Id.* § 7224(5).

<sup>134</sup> H.B. 1241, 96th Leg., 2021 Sess. (S.D. 2021).

<sup>135</sup> For more on Rep. Haugaard, see *Rep. Steven Haugaard - 2021*, S.D. LEG. (last visited July 27, 2021), <https://sdlegislature.gov/Legislators/Profile/1799/Detail>.

<sup>136</sup> H.B. 1241, 96th Leg., 2021 Sess. (S.D. 2021).

<sup>137</sup> S.D. Codified Laws § 25-4 (2021)..

<sup>138</sup> H.B. 1241, 96th Leg., Reg. Sess. (S.D. 2021).

<sup>139</sup> *Id.* § 25-4A-29.

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conflicts; and (3) dispute resolution options.<sup>140</sup> This section would also permit courts to, as part of the parent education program, have children attend a separate program designed to assist them in dealing with the impact of divorce.<sup>141</sup>

In several ways, South Dakota's H.B. 1241 is similar to Pennsylvania's H.B. 1392. First, both bills create some form of seminar for parents to understand the process and effects of divorce litigation on themselves and their children, as well as alternative dispute options.<sup>142</sup> Second, both bills permit courts to create optional seminars for the parents' children.<sup>143</sup> Third, both bills permit parties to be excused from attending the parents seminar for "good cause," in particular, the bills note past or present domestic abuse as an example.<sup>144</sup>

#### d. Washington H.B. 1320 & S.B. 5297

Washington House Bill 1320<sup>145</sup> was first read on the floor of the House of Representatives, and subsequently referred to the House Civil Rights and Judiciary Committee, on January 20, 2021.<sup>146</sup> The bill was introduced by Democratic Representatives Roger Goodman,<sup>147</sup> My-Linh Thai,<sup>148</sup> Joe Fitzgibbon,<sup>149</sup> David Hackney,<sup>150</sup> Sharon Wylie,<sup>151</sup> Mia Gregerson,<sup>152</sup> Tana Senn,<sup>153</sup> Lillian Ortiz-Self,<sup>154</sup> Lauren Davis,<sup>155</sup> Javier Valdez,<sup>156</sup> Debra Lekanoff,<sup>157</sup> Nicole Macri,<sup>158</sup> Vandana Slatter,<sup>159</sup> and Strom Peterson.<sup>160</sup> H.B. 1320's

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Wash. H.B. 1241 § 25-4A-29; Wash. H.B. 1392 § 7224(1), (4)-(5).

<sup>143</sup> Wash. H.B. 1241 § 25-4A-29; Wash. H.B. 1392 § 7225.

<sup>144</sup> Wash. H.B. 1241 § 25-4A-29; Wash. H.B. 1392 § 7222(c)(1).

<sup>145</sup> H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021).

<sup>146</sup> *Id.*

<sup>147</sup> See Roger Goodman: Rep., 45TH LEG. DIST. WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/goodman/> (last visited Dec. 28, 2021).

<sup>148</sup> See My-Linh Thai: Rep., 41ST LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/thai/> (last visited July 31, 2021).

<sup>149</sup> See Joe Fitzgibbon: Rep., 34TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/fitzgibbon/> (last visited July 31, 2021).

<sup>150</sup> See David Hackney: Rep., 11TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/hackney/> (last visited July 31, 2021).

<sup>151</sup> See Sharon Wylie: Rep., 49TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/wylie/> (last visited July 31, 2021).

<sup>152</sup> See Mia Gregerson: Rep., 33RD LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/gregerson/> (last visited July 31, 2021).

<sup>153</sup> See Tana Senn: Rep., 41ST LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/wylie/> (last visited July 31, 2021).

<sup>154</sup> See Lillian Ortiz-Self: Rep., 21ST LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/ortiz-self/> (last visited July 31, 2021).

<sup>155</sup> See Lauren Davis: Rep., 23RD LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/davis/> (last visited July 31, 2021).

<sup>156</sup> See, Javier Valdez: Rep., 46TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/valdez/> (last visited July 31, 2021).

<sup>157</sup> See Debra Lekanoff: Rep., 40TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/lekanoff/> (last visited July 31, 2021).

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companion bill, Senate Bill 5297, was first read on the Senate floor, and later referred to the Senate Law & Justice committee, on January 20, 2021.<sup>161</sup> S.B. 5297 was introduced by Democratic Senators Manka Dhingra,<sup>162</sup> Jeannie Darneille,<sup>163</sup> Mona Das,<sup>164</sup> Patty Kuderer,<sup>165</sup> Jamie Pedersen,<sup>166</sup> and Lisa Wellman.<sup>167</sup><sup>168</sup> After two substitutions,<sup>169</sup> the bills eventually passed both chambers of the legislature, was signed by Governor Jay Inslee,<sup>170</sup> and became law.<sup>171</sup>

The purpose of the law is to modernize, harmonize, and improve the efficacy and accessibility of laws concerning civil protection orders “to prevent and respond to abuse, violence, harassment, stalking, neglect, or other threatening behavior.”<sup>172</sup> While the law primarily created specific definitions for various terminology,<sup>173</sup> it made few changes to Chapter 26 of the state’s Revised Codes relating to the mediation of dissolution proceedings.<sup>174</sup> § 26.09.015 permits matters relating to dissolution proceedings to be set for mediation of the contested issues before, or concurrent with, the setting of the matter for hearing.<sup>175</sup> By making this limited change, however, a majority of the Washington Legislature affirmed its confidence in being able to mediate such disputes.

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<sup>158</sup> See Nicole Macri: Rep., 43RD LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/macri/> (last visited July 31, 2021).

<sup>159</sup> See, Vandana Slatter: Rep., 48TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/slatter/> (last visited July 31, 2021).

<sup>160</sup> See Strom Peterson: Rep., 21ST LEG. DIST., WASH. ST. H. DEMOCRATS, <https://housedemocrats.wa.gov/peterson/> (last visited July 31, 2021).

<sup>161</sup> See H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021); See also S.B. 5297, 67th Leg., Reg. Sess. (Wash. 2021).

<sup>162</sup> See Sen. Manka Dhingra., 25TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://senatedemocrats.wa.gov/dhingra/> (last visited July 31, 2021).

<sup>163</sup> See Sen. Jeannie Darneille., 27TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://senatedemocrats.wa.gov/darneille/> (last visited July 31, 2021).

<sup>164</sup> See Sen. Mona Das, 27TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://senatedemocrats.wa.gov/das/> (last visited July 31, 2021).

<sup>165</sup> See Sen. Patty Kuderer, 28TH LEG. DIST., WASH. ST. H. DEMOCRATS, <https://senatedemocrats.wa.gov/kuderer/> (last visited July 31, 2021).

<sup>166</sup> See Sen. Jamie Pedersen, 24RD LEG. DIST., WASH. ST. SEN. DEMOCRATS, <https://senatedemocrats.wa.gov/pedersen/> (last visited July 31, 2021).

<sup>167</sup> See, Sen. Lisa Wellman, 41ST LEG. DIST., WASH. ST. SEN. DEMOCRATS, <https://senatedemocrats.wa.gov/wellman/> (last visited July 31, 2021).

<sup>168</sup> S.B. 5297, 67th Leg., Reg. Sess. (Wash. 2021).

<sup>169</sup> H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021).

<sup>170</sup> See Gov. Jay Inslee, WASH. ST. GOVERNOR, <https://www.governor.wa.gov/> (last visited July 31, 2021).

<sup>171</sup> Engrossed 2d Substitute H.B. 1320, 67th, Reg. Sess. (Wash. 2021), [hereinafter “H.B. 1320/S.B. 5297”], see <http://lawfilesexst.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1320-S2.PL.pdf#page=1>

<sup>172</sup> *Id.*; H.B. 1320/S.B. 5297 at p.2, § 1(1), Findings, Intent, and Definition.

<sup>173</sup> H.B. 1320/S.B. 5297 at pp. 8-16, § 2, Jurisdiction and Venue.

<sup>174</sup> H.B. 1320/S.B. 5297 at pp. 228, l. 23, §131. (The only change made to Wash. Rev. Code §26.09.015(2020) will be to change the citation for how “family or household member” and “intimate partner” is defined from §26.50.010 to § 10.99.020.).

<sup>175</sup> WASH. REV. CODE ANN. § 26.09.015(1) (2020).

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The Legislature still wishes the mediation of such disputes to be for the purpose of: (1) reducing acrimony which may exist between the parties;<sup>176</sup> (2) to develop an agreement assuring the child's close and continuing contact with both parents after the marriage or the domestic partnership is dissolved;<sup>177</sup> (3) resolving said disputes cost-effectively;<sup>178</sup> (4) maintaining the privacy of such proceedings;<sup>179</sup> and (5) permitting a mediator him or herself to protect the needs and interests of children through interviews.<sup>180</sup> Furthermore, the law maintains an important portion of the law that conforms with the ultimate purpose of the original bills: protection from and against abuse, neglect, abandonment, exploitation, or unlawful harassment.<sup>181</sup>

**e. Wisconsin A.B. 101 & S.B. 107**

Wisconsin Assembly Bill 101 was first read on the Assembly floor and referred to the Committee on Family Law on February 18, 2021.<sup>182</sup> A.B. 101 was sponsored by Republican Representatives Robert Brooks,<sup>183</sup> Janel Brandtjen,<sup>184</sup> David Murphy,<sup>185</sup> Jeffrey Mursau,<sup>186</sup> Ron Tusler,<sup>187</sup> and Chuck Wichgers.<sup>188</sup> A.B. 101's companion piece, Wisconsin Senate Bill 107, was introduced by Republican Senators André Jacque<sup>190</sup> and Joan Ballweg<sup>191</sup>

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *See id.* § 26.09.015(2)(a) (“The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. . . . In order to provide mediation services, the court is not required to institute a family court.”).

<sup>179</sup> *See id.* § 26.09.015(3)(a)(i), (b) (“Mediation communications in post-decree mediations mandated by a parenting plan are admissible in subsequent proceedings for [only] limited purpose[s.] . . . None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator’s testimony and the interest in the mediator maintaining an appearance of impartiality.”).

<sup>180</sup> *See id.* § 26.09.015(4).

<sup>181</sup> Compare H.B. 1320 § 1(1), 67th Leg., Reg. Sess. (Wa. 2021) with WASH. REV. CODE ANN. § 26.09.015(1) (2020).

<sup>182</sup> A.B. 101, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/ab101>.

<sup>183</sup> For more on Rep. Brooks, *see Rep. Robert Brooks: A. Dist. 60*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2128>

<sup>184</sup> For more on Rep. Brandtjen, *see Rep. Janel Brandtjen: A. Dist. 22*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2127>.

<sup>185</sup> For more on Rep. Murphy, *see Rep. David Murphy: A. Dist. 56*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2165>.

<sup>186</sup> For more on Rep. Mursau, *see Rep. Jeffrey Mursau: A. Dist. 36*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2166>.

<sup>187</sup> For more on Rep. Tusler, *see Rep. Ron Tusler: A. Dist. 3*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2207>.

<sup>188</sup> For more on Rep. Wichgers, *see Rep. Chuck Wichgers: A. Dist. 83*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/assembly/2213>.

<sup>189</sup> A.B. 101, 2021 Gen. Assemb., Reg. Sess. (Wis. 2021).

<sup>190</sup> For more on Sen. Jacque, *see Sen. André Jacque: Sen. Dist. 1*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/senate/2099>.

<sup>191</sup> For more on Sen. Ballweg, *see Sen. Joan Ballweg: Sen. Dist. 14*, WIS. ST. LEG. (last visited Aug. 1, 2021), <https://docs.legis.wisconsin.gov/2021/legislators/senate/2250>.

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on February 11, 2021 and then referred to the Committee on Human Services, Children, and Families.<sup>192</sup> These pieces of legislation were eventually signed by Governor Tony Evers,<sup>193</sup> becoming 2021 Wisconsin Act 36<sup>194</sup> on May 24, 2021.<sup>195</sup>

By primarily amending certain language<sup>196</sup> and adding two new statutes,<sup>197</sup> the bills reaffirmed a majority of the legislature's desire for certain familial disputes to be mediated. The main statute affected is Wis. Stat. § 767.405(8) (2021).<sup>198</sup> § 767.405(8)(a) requires, in any action affecting the family where it appears that legal custody or physical placement is contested, parties to attend at least one session with a mediator, and if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.<sup>199</sup> Attempting to encourage, it seems, the less formal aspects of mediation to litigation, the legislature chose to amend the statute's language regarding the role the mediator has related to the parties.<sup>200</sup> Attempting to encourage further amicable cooperation, the act created a new subsection, allowing the parties to exchange proposed parenting plans before the initial mediation session, electronically or otherwise.<sup>201</sup>

### III. Observations and Implications

This section briefly describes observations about and implications from these pieces of legislation.<sup>202</sup>

#### A. Cost

Keeping financial costs low was no doubt kept in mind with these pieces of legislation. This may be no surprise considering, as noted above, money is one of the most common causes of marital strife.<sup>203</sup> Mediation is often cited as a less expensive means of dispute resolution,<sup>204</sup> as is arbitration.<sup>205</sup> It may, therefore, seem obvious that legislation

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<sup>192</sup> S.B. 107, 2021 Gen. Assemb., Reg. Sess. (Wis. 2021).

<sup>193</sup> For more on Governor Evers, see *Governor Tony Evers*, WISCONSIN.GOV (last visited Aug. 1, 2021), <https://evers.wi.gov/Pages/Home.aspx>

<sup>194</sup> Act 36, 2021 Gen. Assemb., Reg. Sess. (Wis. 2021).

<sup>195</sup> S.B. 107, 2021 Gen. Assemb., Reg. Sess. (Wis. 2021).

<sup>196</sup> See Act 36, 2021 Gen. Assemb., Reg. Sess. §§ 1, 3 (Wis. 2021).

<sup>197</sup> *Id.* §§ 2–3.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> See Act 36, 2021 Gen. Assemb., Reg. Sess., § 1 (Wis. 2021) (changing the requirement that “a mediator shall *review* with the parties the nonfinancial provisions that must be included in the parenting plan under s. 767.41 (1m) to “discuss[ing] with each of the parties information included in proposed parenting plans under s. 767.41 (1m).”) (emphasis added).

<sup>201</sup> *Id.* § 2.

<sup>202</sup> One observation worth mentioning only very briefly is the apparent partisanship in at least introducing these pieces of legislation. Notice how none of the legislative pieces in this article involve sponsors from different political parties for a single bill.

<sup>203</sup> Savage, *supra* note 48.

<sup>204</sup> McDowell, *supra* note 60; see also ABA SEC. OF DISP. RESOL., ABA, BEYOND THE MYTHS: GET THE FACTS ABOUT DISPUTE RESOLUTION (Gina Viola Brown ed., 2007) (“Fact: Mediation is often available at low



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continues to be introduced encouraging, and in some instances requiring, important familial disputes to be mediated<sup>206</sup> or arbitrated.<sup>207</sup>

### B. Confidentiality

The formality of litigating cases in front of judges, and in the public eye, may further add to the stress and embarrassment felt in divorce, custody, and other familial proceedings. These pieces of legislation appear to address these concerns by empowering parties to limit who may hear what has gone on in the family home through statutorily permitting or defaulting confidentiality.<sup>208</sup> One piece of legislation, however, appears to treat the privacy of such proceedings much more specifically than others.

For example, one substantial difference between South Dakota's H.B. 1241 and Pennsylvania's H.B. 1392 is the second section to be added by H.B. 1241. § 25-4A-30 of H.B. 1241 would significantly limit the admissibility of evidence regarding what occurs during these seminars in four ways.<sup>209</sup> First, no statements made by a party during participation in a parent education program are inadmissible as evidence absent an express, written waiver by all parties.<sup>210</sup> Second, no record may be made regarding a party's participation in a parent education program, except a record of attendance at and completion of the program.<sup>211</sup> Third, program facilitators may not disclose any information about a person attending a parent education program.<sup>212</sup> Fourth, program facilitators may not be subpoenaed or called as witnesses in a court proceeding.<sup>213</sup>

Notably, these bills recognize the need to not allow these proceedings to act as an unbreakable wall when it goes against public policy, specifically if "privacy" would put one of the parties at risk from another.<sup>214</sup>

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or no cost."); Adrian Taylor, *Mediation Is a Much Better Option than Court Right Now*, Herrington Carmichael Solicitors (May 4, 2020), <https://www.herrington-carmichael.com/mediation-rather-than-court/>, ("Now more than ever, people are turning to using Mediation. It may be Business Mediation or Corporate Mediation, or Family Mediation to settle an estate, all of which aim to bring a case to an agreed conclusion much cheaper and faster, which makes a great deal of sense for all.").

<sup>205</sup> Clifton L. Brinson, *Tips for Maximizing the Benefits of Arbitration*, ABA (Mar. 27, 2017), <https://www.americanbar.org/groups/litigation/committees/commercialbusiness/practice/2017/tips-for-maximizing-the-benefits-of-arbitration/>.

<sup>206</sup> See H.B. 1392 §7222(b), (g), Gen. Assemb., Reg. Sess. (Pa. 2021); see also WASH. REV. CODE § 26.09.015(2)(a) (2020); WIS. STAT. § 767.405(8) (2021).

<sup>207</sup> See H.B. 1366 § 7373(a), 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>208</sup> See H.B. 1366 § 7386(e); H.B. 1392 § 7222(a)(3); H.B. 1241 § 25-4A-30, 69th Leg., Reg. Sess. (S.D. 2021); § 26.09.015(3)(a)(i), (b).

<sup>209</sup> H.B. 1241 §25-4A-30.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> H.B. 1392 §7222(c), Gen. Assemb., Reg. Sess. (Pa. 2021) ("A party may be excused from mediation or the mediation orientation program for good cause shown..."); see also H.B. 1320/S.B. 5297.

*State Legislative Update***C. Parental Program Efficacy**

While some critics speak highly of these educational programs for mainly parents, but also children,<sup>215</sup> others do not.<sup>216</sup> This disagreement, therefore, may call into question how effective these programs truly are. But, when 96 percent of seminar attendees claim they found the content from these seminars either helpful or extremely helpful,<sup>217</sup> how could a legislature not go with this legislative trend?<sup>218</sup> So long as legislatures (and other law-making or promulgating bodies) avoid constitutional issues<sup>219</sup> and can, instead, cite to legislative finds and goals regarding resolving disputes amicably and through agreement,<sup>220</sup> pre-resolving social and psychological woes through education and self-reflection,<sup>221</sup> and more cheaply,<sup>222</sup> these types of legislative acts will most likely continue to be the trend, warranted by reliable data or not.

**IV. Conclusion**

What steps should be taken to mitigate the negative familial and societal shockwaves contributed by divorce are still generally uncertain. Various suggestions will continue to be made.<sup>223</sup> At least for various state legal systems, however, what seems certain is that they will continue to incentivize, when feasible, the amicable resolution by the parties themselves. Some of these steps may seem small for states already with comprehensive alternative dispute resolution plans in place, while still others may be just beginning in large strides.<sup>224</sup>

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<sup>215</sup> See generally, e.g., “Parenting After Divorce”: *A Mandatory Seminar in Two Denver Courts*, 23 COLO. LAW., July 1994, at 1505.

<sup>216</sup> See generally, e.g., Tali Schaefer, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 COLUM. J. GENDER & L. 491, 492 (2010) (arguing legislatures’ “preoccupation with blaming parents has resulted in laws that do little to help children and much to belittle the tangible negative implications that divorce holds for parents, especially mothers.”).

<sup>217</sup> “Parenting After Divorce”: *A Mandatory Seminar in Two Denver Courts*, *supra* note 215.

<sup>218</sup> One critic would call this reliance on attendee satisfaction surveys to be “methodologically unsound.” Schaefer, *supra* note 216, at 502.

<sup>219</sup> See generally, e.g., Russell Fowler, *Courts, Courses, and Controversies: The Constitutional and Procedural Challenges to Rules of Court Requiring Attendance at Parenting Seminars*, 37 NEW ENG. L. REV. 25 (2002). Some of the more suspect penalties regarding failing to abide by these seminar requirements include: (1) losing visitation rights; (2) negatively influencing custody decisions; (3) or even imprisonment. Schaefer, *supra* note 216, at 496.

<sup>220</sup> H.B. 1392 § 7222(a)(1), Gen. Assemb., Reg. Sess. (Pa. 2021); WASH. REV. CODE § 26.09.015(1) (2020); Act 36 § 2, 2021 Gen. Assemb., Reg. Sess. (Wis. 2021).

<sup>221</sup> H.B. 1392 § 7224(1), (4)-(5); see also H.B. 1241 § 25-4A-29, 69<sup>th</sup> Leg., Reg. Sess. (S.D. 2021); § 26.09.015(1).

<sup>222</sup> H.B. 1366 § 7373(a), 2021 Gen. Assemb., Reg. Sess. (Pa. 2021); H.B. 1392 § 7222(g); §26.09.015(2)(a); see also WIS. STAT. § 767.405(8) (2021).

<sup>223</sup> See Khazan, *supra* note 56 (“Some legal experts suggest reforming the process so that getting an uncontested divorce is much simpler, and maybe even doesn’t take place in court. And for difficult, contested divorces, perhaps Americans should be guaranteed a lawyer, just as they are for criminal cases.”).

<sup>224</sup> See e.g., H.B. 1366.

### **Regulating the Arbitrator for an effective Arbitration**

Bill Number: New Jersey Senate Bill 699

Bill Status: Bill has been passed.

Bill Number: New York Senate Bill 2100

Bill Status: Bill is currently In Committee.

Bill Number: New York State Assembly Bill 3297

Bill Status: Bill is currently In Committee.

Bill Number: New York Senate Bill 697

Bill Status: Bill is currently In Committee.

#### **I. Introduction**

The COVID-19 pandemic has had rippling effects in every aspect of modern society. Time can only tell what sort of lasting marks the pandemic will leave on society. As the economy and marketplace continue to shift and recover from the virus; some old industries must shrink, and new ones are born. Alternative Dispute Resolution exists throughout as a means by which employers and employees, customers and businesses, and professional services and clients can meaningfully engage in and resolve their differences.

As Alternative Dispute Resolution's importance remains prominent, state legislatures are left to contemplate meaningful policies by which the new arena for resolving differences may be policed. A survey of new bills introduced or passed in New Jersey, New York, and Oklahoma demonstrate how arbitration may become more prominent and accessible yet increasingly controlled as Legislatures seek to regulate standards of behavior for Arbitrators; limit kinds of evidence available in arbitration proceedings; and increasingly require neutral arbitrators in commercial arbitration proceedings.

#### **II. Survey of New Legislation**

This year saw relatively busy state legislatures in the areas of arbitration and dispute resolution. A search of Westlaw's new and proposed legislation using terms regarding arbitration, mediation, and other such ADR keywords resulted in 7,986 proposed or enacted bill in the last 12 months across all states. However, between August 1<sup>st</sup>, 2019, and August 1<sup>st</sup>, 2020, there were only 1,221 proposed or enacted bills matching these criteria (mediation, arbitration, dispute resolution, conflict resolution, ombudsman, or mini-trial).

*State Legislative Update***A. New Jersey SB 699**

New Jersey's SB 699 (2020) is a policy requiring all Department of Education Arbitrators to receive diversity, equity, and inclusion training as part of their required training to be an arbitrator for the department.<sup>225</sup> The New Jersey Department of Education maintains a panel of 50 arbitrators whose purpose is to hear disputes arising out of employment terminations or reductions.<sup>226</sup> The current statutes regarding arbitrators require membership in the National Academy of Arbitrators, as well as possessing knowledge or personal experience in public education.<sup>227</sup> The new bill modifies N.J.S. 18A:6-17.1 by adding, "The training on conduct unbecoming an employee shall also include issues related to cultural diversity and bias. Any arbitrator on the permanent panel as of the effective date of . . . [TBD] shall receive training on these issues within 18 months of the effective date of that act."<sup>228</sup>

The bill was introduced by Senator Ruiz, New Jersey's President Pro Tempore.<sup>229</sup> In the attached statement, the sponsors underscored existing training which included training regarding sexual harassment and assault. However, the sponsors emphasized a need to add a measure requiring diversity education for the arbitrators in an effort to create more rounded arbitrators. The bill was signed into law on April 9<sup>th</sup>, 2021.<sup>230</sup> No signing statements were issued.

While diversity training for arbitrators is an excellent step forward, it is important to remember the limitations which currently exist for victims of harassment in arbitration. One study found that 48% of harassment-related punishments (termination or suspensions for harassment) were overturned, reduced, or modified in arbitration.<sup>231</sup> These cases all involved a grievance filed by the alleged harasser.<sup>232</sup> A common trend cited was heavy reliance by the arbitrator on language of the collective bargaining agreement. The other consistent element for the sustaining of grievances was disparate evidentiary standards.<sup>233</sup> Some arbitrators applied a preponderance standard, while others merely looked to see whether the employer was justified in punishing the alleged harasser. These disparate outcomes can have far-ranging effects. When 48% of grievances have their punishment reduced or vacated, victims may feel pressure to not report their harassers or fear retaliation if they do. Pressures and lack of support for victims can lead to environments in which assault and abuse may flourish unintentionally, leaving workplace environments toxic and open to liability. Courts have acknowledged the problems of arbitrating sexual harassment cases by overturning awards judicial review<sup>234</sup>, whilst some state legislatures have banned the practice entirely.<sup>235</sup>

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<sup>225</sup> S.B. 699, 219th Leg., Reg. Sess. (N.J. 2020).

<sup>226</sup> N.J. REV. STAT. § 18A:6-16 (2020).

<sup>227</sup> N.J. REV. STAT. § 18A:6-17.1 (2020).

<sup>228</sup> S.B. 699, 219th Leg., Reg. Sess. (N.J. 2020).

<sup>229</sup> Senator M. Teresa Ruiz, N.J. LEG., available at [njleg.state.nj.us/members/bio.asp?Leg=287](http://njleg.state.nj.us/members/bio.asp?Leg=287).

<sup>230</sup> *Governor Murphy Takes Action on Legislation*, N.J. OFF. OF THE GOVERNOR (April 9, 2021), <https://www.nj.gov/governor/news/news/562021/approved/20210419c.shtml>

<sup>231</sup> Stacy A. Hickox & Michelle Kaminski, *Measuring Arbitration's Effectiveness in Addressing Workplace Harassment*, 36 HOFSTRA LAB. & EMP. L.J. 293, 335 (2019).

<sup>232</sup> *Id.* at 336.

<sup>233</sup> *Id.* at 352.

<sup>234</sup> *Id.* at 319–20.

<sup>235</sup> *Id.* at 298–99.

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The New Jersey legislature's goal is admirable in better equipping arbitrators to handle issues of diversity, equity, and inclusion in the workplace. However, measured optimism is essential. Despite training in sexual harassment issues arbitrators have fumbled application of the training and struggled to find evidence of harassment without clear guidance. The future will tell whether the situation may be different for issues of diversity, equity, and inclusion.

### B. New York SB 2100

The New York Senate has taken up a bill introduced by Sen. Sepulveda to require arbitrators to disclose potential conflicts of interest and to allow the overturning of an arbitration award upon a showing that the arbitrator was affiliated with a party or had a financial interest in the outcome of the arbitration.<sup>236</sup> Currently in the Senate Judiciary Committee, the bill amends Article 75 of the Civil Practice Law, regarding arbitration.<sup>237</sup> The bill would enact several large changes to arbitration law in New York. First, "any language requiring the controversy be submitted to an arbitrator... arbitration organization that is not a neutral third party arbitrator... shall be deemed void."<sup>238</sup> Second, "Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including: (1) a financial or personal interest in the outcome of the arbitration proceeding; and (2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator."<sup>239</sup> Deeming language not requiring a neutral arbitrator null and void is a large step for the practice of arbitration; especially considering the volume of arbitration seated in New York.

Neutrality in arbitration is an essential ingredient in the continuation of the practice. Without a requirement of neutrality, there is no legitimacy to the arbitrator's ruling. Authorities on the matter have previously held parties have a right to judgement of a disinterested arbitrator.<sup>240</sup> Federal law currently allows Judicial vacatur of an award where "there was evident partiality or corruption in the arbitrators."<sup>241</sup> An existing relationship between an arbitrator and a party has long been held as sufficient basis for the vacatur of an award as well.<sup>242</sup> Thus, the New York law does not take fundamentally new measures but instead heighten existing ones. The New York bill is still in committee, so its effects are as of yet unknown.

Disclosure is a widely criticized requirement in arbitration literature, as evidenced by the heated debate surrounding *Applied Indus. Materials Corp.*,<sup>243</sup> with authors such as

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<sup>236</sup> S. 2100, 32nd Cong. § 2 (as reported by S. Comm. on the Judiciary, January 19, 2021).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> 4 Am. Jur. 2d, *Alternative Dispute Resolution* § 240.

<sup>241</sup> 9 U.S.C. § 10 (a)(2) (2020).

<sup>242</sup> *Barcon Associates, Inc. v. Tri-County Asphalt Corp.*, 430 A.2d 214 (N.J. 1981).

<sup>243</sup> *Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S.*, 492 F.3d 132 (2nd Cir. 2007).

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Sweifly arguing the Second Circuit’s approach of evident rather than apparent partiality better protects the arbitrator’s office from unnecessary and speculative challenges.<sup>244</sup> Of course, as Sweifly points out, there is a meaningful difference between a relationship that may be construed as possible bias and factual bias. A critic of Sweifly might respond by arguing such a distinction is impossible to make without inhabiting the mind of the arbitrator, leaving parties simply hoping their arbitrator is neutral and their federal rights are preserved. Sweifly’s confidence in arbitrators is inspiring, if misplaced. As parties are freely contracting into mandatory arbitration situations, those freedoms should be preserved as arbitrators disclose relationships and allow the interested parties to make informed judgement with such information.

**C. New York AB 3297**

Arbitrator disclosure is further contemplated by New York Assembly Bill 3297.<sup>245</sup> This bill, sponsored by William Colton (D), would amend existing legislation to require Professional Arbitration Organizations to disclose details of the arbitrations they oversaw on a quarterly basis. These disclosures must be to a publicly accessible and searchable database, presumably for purposes of enabling consumer and potential parties to gather information regarding potential arbitrators.

Applying to consumer arbitration, these disclosures would reveal the identity of the non-consumer parties as well as the prevailing party in all actions. Similar issues of actual and apparent bias present themselves (*see above*) and may be resolved by quarterly disclosure of the disputes the arbitrators are involved in. The conversation surrounding disclosure is contemplated above. However, as Coase famously argues, complete information is essential for proper contracting.<sup>246</sup> When parties do not have the necessary information for transactions (such as selecting a proper arbitrator) less than efficient outcomes are all but inevitable. Here, as parties are unable to select proper arbitrators, perceived bias can run rampant, causing perceived unfairness and skepticism in the proceedings.

**D. New York SB 697**

This bill also appears to be a similar measure as SB 3297 (discussed above). Requiring commercial disputes to be submitted to a neutral party, the proposed bill amends Article 75 of the Civil Practice Law, regarding arbitration as well.<sup>247</sup> Put simply, the bill requires that “Arbitration of any employment or consumer dispute shall be conducted by a neutral third party arbitrator.”<sup>248</sup> A neutral arbitrator is defined as not having an undisclosed known, direct, or material interest in the outcome of the arbitration proceeding or a relationship with any of the parties (including counsel representatives, witnesses or another

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<sup>244</sup> Mohamed Sweifly, *Arbitrator Disclosure: In Defense of The Second Circuit Approach*, 44 *FORDHAM INT’L L.J.* 529 (2020).

<sup>245</sup> H.R. 3297, 32nd Cong. § 2 (2021).

<sup>246</sup> F.A. Hayek, *The Use of Knowledge In Society*, 35 *AM. ECON. REV.* 519 (1945).

<sup>247</sup> S. 697, 27th Cong. (as reported by S. Comm. on the Judiciary 2021).

<sup>248</sup> *Id.*

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arbitrator).<sup>249</sup> As with SB 3297, the bill remains with the Senate Judiciary Committee. It appears to be submitted earlier than 3297 and appears to be an early attempt at arbitration reform before being combined with 3297.

The current second circuit approach (governing New York) follows the Federal Arbitration Act in taking “evident partiality” as being a (vague) condition for vacatur an award.<sup>250</sup> The Second circuit has implemented this with a reasonable person standard to determine the existence of partiality.<sup>251</sup> This move brings a greater amount of objectivity to the analysis. The Second circuit ends up examining (1) the arbitrator’s personal interest in the proceedings, (2) the relationship between arbitrator and party, and (3) the proximity in time between the relationship and the proceeding.<sup>252</sup> This formulation creates an environment (under federal law) where arbitrators must be careful to document their relationships with parties and conflicts to prevent judicial review in the Second circuit. The New York law would take these regulations and apply them at the state level.<sup>253</sup>

### III. Trends in Arbitration Legislation

The selected proposed and enacted bills reflect a trend in arbitration towards regulation in a manner which promotes legitimacy. The regulation and oversight instilled by the new policies does not necessarily regulate or restrict. Rather, strict rules about an arbitrator’s neutrality (a bedrock principle of the Legal system) reflect an attempt to add sufficient requirements such that the system of arbitration is given legitimacy where it has previously lacked it. Additionally, pro-employee policies are being implemented in arbitration matters. By expanding access to arbitration for employees (New Jersey SB 993); making privileged sensitive discussions in peer counseling (Oklahoma SB 361); and heightened requirements for *neutral* arbitration and disclosure in consumer contracts, the practice of arbitration is given greater legitimacy, wider appeal, and wider use.

Combined, such measures make arbitration legitimate and accessible, creating the possibility for broader acceptance of arbitration as a meaningful alternative to the courts rather than a method for cheating customers in contracting.<sup>254</sup> These regulations and limitations may initially appear unappealing to arbitrators and those seeking to utilize it, but greater access and legitimacy reinforces the existing benefits of arbitration: economy, confidentiality, and flexibility.<sup>255</sup>

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<sup>249</sup> *Id.*

<sup>250</sup> 9 U.S.C. § 10 (a)(2) (2020).

<sup>251</sup> *Morelite Const. Corp. (Div. of Morelite Elec. Serv., Inc.) v. New York City Dist. Council Carpenters Ben. Funds*, 748 F.2d 79, 83 (2d Cir. 1984).

<sup>252</sup> *Sweify*, *supra* note 244, at 74. (*citing* *Scandinavian Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 74 (2d Cir. 2012).

<sup>253</sup> S. 697, 27th Cong. (as reported by S. Comm. on the Judiciary 2021).

<sup>254</sup> Joe Valenti, *The Case Against Mandatory Consumer Arbitration Clauses*, CENTER FOR AMERICAN PROGRESS (Aug. 2, 2016), <https://www.americanprogress.org/issues/economy/reports/2016/08/02/142095/the-case-against-mandatory-consumer-arbitration-clauses/>; Scott Medintz, *Forced Arbitration: A Clause for Concern*, CONSUMER REPORTS (Jan. 30, 2020), <https://www.consumerreports.org/mandatory-binding-arbitration/forced-arbitration-clause-for-concern/>.

<sup>255</sup> *Brinson*, *supra* note 205.

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When an arbitration is compliant with rules of disclosure and neutrality, a party who may be initially dissatisfied with an award or denial will not have access to arguments surrounding the neutrality of the arbitrator in petitioning for review. When arbitrators are required to make extensive disclosures regarding their relationship to the conflict and the dispute must be settled by a neutral arbitrator in the first place, the aggrieved party to the arbitration cannot argue the arbitrator was inappropriately biased for or against a party. Closing these arguments for review limits the frequency and likelihood of success for review. This means parties do not have to endure the costly process of litigating judicial review of a proceeding, the confidentiality of the proceeding is preserved, and the awards granted do not have to be reduced to what a court thinks appropriate.

### A. Increased Scrutiny on Arbitrators

New York and New Jersey's proposed legislation (New Jersey SB 699, New York SB 2100, AB 3297, and SB 697) all put the focus on the arbitrator and increase expectations for arbitrators. Whether it be greater education or increased reporting, the expectations placed on arbitrators focus on creating a better adjudicator, rather than prioritizing speed or economy of the proceedings. While not normally a balance, economy is usually a legislative priority when it comes to legislation.<sup>256</sup> By creating checks to the system, a level of oversight is extended on what is otherwise regarded as a private contracting matter not within the purview of the courts.

What must flow from a discussion of arbitrator regulation are the parallels to the regulation of judges. While legislative authority over judges is scant, standards of practice do exist.<sup>257</sup> While codes of conduct certainly require neutrality and objectivity<sup>258</sup>, it is virtually unheard of for laws to be passed requiring education in a social topic for judges.<sup>259</sup>

An oft-overlooked advantage to arbitration is subject matter expertise of arbitrators. While a judge may be intimately familiar with law, an arbitrator may be better able to grasp the nuances of, say, civil engineering in hearing a dispute and thus may be better capable to navigating difficulties and complexities which tend to arise in some disputes. Placing new diversity training requirements on education employment arbitrators reinforces this underlying advantage to arbitration procedures.

Yet, some conflict may be seen emerging between these two legislative goals. While expanding the requirements for impartiality, the New York legislature has attempted to require disclosure of previous relationships<sup>260</sup>. On the surface, this may be beneficial. However, if arbitrators are to be specialized in certain areas to be better equipped to handle and negotiate conflicts in specific fields, then they will naturally have developed relationships with parties that may be submitting to arbitration. For example, a well-equipped engineering

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<sup>256</sup> H.R. 345 101st Leg. Sess., Reg. Sess. (Mo. 2021); S.B. 3458 219th Leg. Sess., Reg. Sess. (N.J. 2021).

<sup>257</sup> *I.e.*, Cal. Code of Judicial Ethics, at [http://www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf); New York State Code of Judicial Conduct, at <https://nysba.org/app/uploads/2020/02/CJC.pdf>.

<sup>258</sup> California Code of Judicial Ethics, Canon 3 "A Judge Shall Perform the Duties of Judicial Office Impartially, Completely, and Diligently"; New York Code of Judicial Ethics, Canon 3 "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently."

<sup>259</sup> Continuing Legal education requirements are not unheard of but lack the social relevance of certain educational programs like that contemplated in S.B. 699, 219th Leg. Sess., Reg. Sess. (N.J. 2021).

<sup>260</sup> A.B. 3297, 27th Leg. Sess., Reg. Sess. (N.Y. 2021).



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arbitrator will naturally have experience doing business as a civil engineer. This means interacting with other members of the industry such as designers, contractors, and suppliers and thereby developing what may later be seen as bias-generating relationships.

When a dispute between two parties emerges, there is always the chance one of the parties has had a prior working relationship with that arbitrator, violating the requirements of the proposed legislation. Therefore, a fine line must be navigated by the legislatures in drafting these codes so they may continue to encourage trained and equipped arbitrators to practice without violating unreasonable neutrality and objectivity standards.

### **B. Pro-Employee Arbitration Policies**

A handful of new arbitration policies emerged in the past year which increase the accessibility of arbitration for Employees. First, a New Jersey law increased access to arbitration for non-teaching education employees.<sup>261</sup> Second, an Oklahoma law prevents the use of statements made in Peer Counseling in arbitration and other judicial proceedings for Public Health employees<sup>262</sup>. Finally, New York's SB 697 (2021) and other attempted legislation requires neutral arbitrators for employment dispute arbitration. These policies open Arbitration up to more employees, and ensure the process is fair for the employees while they partake in it.

On their face, these policies are helpful for employees. Guaranteeing the arbitration process over litigation for non-teaching staff helps keep costs low in settling disputes, as well as minimizing the distraction and notoriety which can be garnered by a public trial of a state employee. Prohibiting the use of Peer counseling statements protects what sanctity exists in peer counseling for emergency workers and law enforcement officers. They may feel the confidence to speak openly on difficult topics, and do not have to work to overcome something they said in the painfully public forum of a courtroom. This trend in Arbitration legislation at the state level can only be characterized as a positive trend towards fairness and accessibility of arbitration, continuing the mission enhance access to meaningful methods of dispute resolution outside of the slow and costly court systems.

## **IV. Conclusion**

Our legal system is ever evolving, and Alternative Dispute Resolution is no different. The selected proposed and enacted policies reflect that reality. These policies and bills reflect the trend of 2021 towards greater oversight and accountability for arbitrators, as well as a host of more employee-friendly measures within arbitration. These trends will be the methods by which arbitration and alternative dispute resolution gain legitimacy and wider use. By ensuring the neutrality of arbitrators in certain contexts—a baseline guarantee of the formal system—arbitration gains significant credibility. Additionally, broader accessibility for employees ensures fairness in proceedings, as well as a wider appeal to an important field of law.

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<sup>261</sup> S.B. 993, 219th Leg. Sess., Reg. Sess. (N.J. 2021).

<sup>262</sup> S.B. 361, 2021 Leg. Sess., Reg. Sess. (Okla. 2021).

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**State Facilitated Use of Mediation to Reduce Housing Insecurity**

Bill Numbers: Connecticut Senate Bill 891; Delaware Senate Bill 101; Florida Senate Bill 412; Georgia House Bill 818; Hawaii House Bill 1376; Maine Senate Bill 1508; Massachusetts House Bill 2143.

Summary: The economic consequences of the global COVID-19 pandemic are expected to impact the ability of tenants and mortgagees to make rental and mortgage payments. With the federal government's only direct solution offending the nation's system of federalism, state legislatures have hastened to pass legislation to increase resolution of landlord-tenant disputes and foreclosure proceedings via non-court room mechanisms.

Status: Connecticut Senate Bill 891 passed and signed by the Governor on June 14, 2021.

Delaware Senate Bill 101 Engrossed on June 8, 2021, with 50% progression.

Florida Senate Bill 412 died on April 30, 2021, in the Judiciary committee.

Georgia House Bill 818 was introduced March 23, 2021, and has 25% progression.

Hawaii House Bill 1376 passed June 21, 2021.

Maine Senate Bill 1508 passed June 16, 2021.

Massachusetts House Bill 2143 was scheduled for a Joint Municipalities and Regional Government Committee meeting on July 29, 2021.

**I. Introduction**

In response to the increase of litigation and related costs over the past fifty years, courts and legislatures have encouraged the use of non-litigation methods of dispute resolution. This effort has extended to landlord-tenant disputes and the foreclosure process mortgagees must use to recover mortgaged properties from debtors who cannot make payments. While the primary motivator for the judicial and legislative branches has been a desire to alleviate the burden on courts so as to ensure the court systems are not overwhelmed to the point of ceasing to function, alternative dispute resolution methods such as mediation also have potential to alleviate some of the pain of dispute resolution. In actions such as evictions and foreclosures where a defendant is at risk of losing the defendant's home, there is considerable potential for alternative dispute resolution to have a meaningful impact on improving the lives of those involved. With the rate of evictions and foreclosures expected to

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rise as a result of the global COVID-19 pandemic, legislatures have turned to mediation to improve the situation for tenants and mortgagors.

## II. A Big Problem With Significant Human Cost

### A. Traditional landlord-tenant eviction process

The process for removing someone from a home due to the breach of a lease is long, expensive, and painful for at minimum the tenant—if not both parties.<sup>263</sup> Generally, the process involves the filing of a court action, presentation of evidence, an order by a judge, and potentially enforcement by a sheriff.<sup>264</sup> Tenants can raise a myriad of defenses, furthering elaborating the court proceeding.<sup>265</sup>

### B. Traditional foreclosure process

Like eviction, foreclosure proceedings can take a long time and cost lots of money.<sup>266</sup> The process varies by state, but can be described as generally one of two forms.<sup>267</sup> In the first, the process resembles litigation in that an action is filed with a court and a trial is held before a judge.<sup>268</sup> In the second, state legislatures have empowered mortgagees to use a non-judicial process so long as particular formalities are complied with.<sup>269</sup> While generally less expensive and quicker than the judicial foreclosure process, the nonjudicial process is not without its complications.<sup>270</sup> Even in states with a nonjudicial process, the courts are always available to resolve disputes between mortgagees and mortgagors.<sup>271</sup> Regardless of the process, there is ample room for differences of opinions as to facts such as the value of the property, whether breach has occurred, and the amount of outstanding indebtedness.<sup>272</sup>

### C. COVID Impact on Evictions

Many commentators expect that the global COVID-19 pandemic will result in an increase in the number of evictions and foreclosures.<sup>273</sup> This expectation is founded on the

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<sup>263</sup> See generally Lily Bolduc, *Steps in the Eviction Process: How Does Eviction Work?*, AVAIL (last updated Aug. 23, 2021), <https://www.avail.co/education/articles/stepsin-the-eviction-process-how-does-eviction-work>; see also *Missouri Eviction Process*, NATIONAL EVICTIONS, (last visited Oct. 23, 2021), <https://nationalevictions.com/home/welcome/states-eviction-process/missouri-eviction-process/>.

<sup>264</sup> *Id.*

<sup>265</sup> See *id.*

<sup>266</sup> See generally GRANT NELSON ET AL., REAL ESTATE TRANSFER, FINANCE, AND DEVELOPMENT 694–95 (American Casebook, 9th ed. 2006) (explaining the mechanisms and necessary parts of foreclosure).

<sup>267</sup> *Id.*

<sup>268</sup> See *id.* at 696.

<sup>269</sup> See *id.* at 724–25.

<sup>270</sup> See *id.* at 726.

<sup>271</sup> See *id.* at 725–26.

<sup>272</sup> NELSON, *supra* note 266 at 737.

<sup>273</sup> See Deborah Thompson Eisenberg et al., *The Role of Mediation in an Integrated System of Eviction Prevention*, 2 MD B. J. 112 (2020); See also *Struggling Homeowners Get Extension, But Did COVID-19*

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economic costs directly resulting from the pandemic and the secondary impact those costs have for tenants and mortgagors.<sup>274</sup> Individuals who have lost and continue to lose income as a result of the pandemic will be less able to make rent and mortgage payments.<sup>275</sup> The income of landlords and those whose income is generated by the mortgage servicing industry will be secondarily affected due to the lost rent and mortgage payments.<sup>276</sup>

**D. Federal Eviction Moratorium**

In response to the COVID crisis, Congress passed the Coronavirus Aid, Relief, and Economic Security Act in March 2020, which imposed a 120-day moratorium on evictions on properties involved in federal assistance programs or federally backed loans.<sup>277</sup> This limited moratorium was not renewed upon expiration.<sup>278</sup>

On September 4th, 2020, the Center for Disease Control (CDC) issued an order imposing another eviction moratorium.<sup>279</sup> Unlike the earlier Congressional action, the CDC's order was not limited to properties involved with the federal government directly.<sup>280</sup> The CDC's order stated, "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order."<sup>281</sup> The CDC reasoned that it had authority to issue such a widespread order pursuant to 42 U.S.C. 264 and 42 CFR 70.2.<sup>282</sup> While the order was initially set to expire on December 31, 2021, it was extended for one month by Congress<sup>283</sup> and three more times by the CDC after the Congressional extension expired.<sup>284</sup> The order did expire on July 31, 2021, but within a week the CDC reinstated the order.<sup>285</sup>

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*Housing Protections Work?* U.S. GOV'T ACCOUNTABILITY OFF. (July 20, 2021) <https://www.gao.gov/blog/struggling-homeowners-getextension%2C-did-covid-19-housing-protections-really-work>; Shaina Mishkin, *There Probably Won't Be A Post-COVID Wave of Foreclosures, Here's Why*, BARRON'S (Mar. 2, 2021 3:30 PM) <https://www.barrons.com/articles/there-probably-wont-be-a-postcovid-wave-of-foreclosures-heres-why-51614717019>.

<sup>274</sup> See *Eviction, Mortgage, & Foreclosure Relief During COVID-19: 50 State Resources*, JUSTICIA (last reviewed July 2021), <https://www.justia.com/covid-19/50-state-covid-19-resources/eviction-mortgage-foreclosure-relief-during-covid-19-50-state-resource/>.

<sup>275</sup> *Id.*

<sup>276</sup> See Diana Olick, *Some Landlords Sell Properties as CDC Extends Eviction Ban*, CNBC (Mar. 29, 2021 12:54 PM), <https://www.cnbc.com/2021/03/29/covid-eviction-ban-forces-somelandlords-to-sell-properties.html>.

<sup>277</sup> Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §9058 (2020).

<sup>278</sup> *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, No. 21A23, 2021 WL 3783142, at \*2 (U.S. Aug. 26, 2021).

<sup>279</sup> Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292-01 (Sept. 4, 2020).

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Consolidated Appropriations Act, 42 U.S.C. § 264 (2021).

<sup>284</sup> Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020-01 (Feb. 3, 2021), 16731-01 (Mar. 31, 2021), 34010-02 (June. 28, 2021).

<sup>285</sup> Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 86 Fed. Reg. 43244-01 (Aug. 6, 2021).

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In the spring of 2021, Realtor associations and rental property managers in Alabama and Georgia joined to challenge the CDC as lacking authority to issue the order.<sup>286</sup> The District Court granted summary judgment to the plaintiffs.<sup>287</sup> However, the court left the moratorium in effect by staying its order pending appeal.<sup>288</sup> The case worked its way all the way to the Supreme Court, where the stay was not lifted despite three justices voting to do so.<sup>289</sup> After the CDC reinstated the moratorium in August 2021, the plaintiffs sought to have the stay vacated.<sup>290</sup> Again, the motion to lift the stay eventually was brought to the Supreme Court.<sup>291</sup> This time, citing practical considerations that had changed in the interim since its last review, the Supreme Court vacated the stay, lifting the CDC's eviction moratorium.<sup>292</sup> The Supreme Court was direct in its view that the proper place for such a sweeping exercise of government control was a Congressional action.<sup>293</sup>

### III. The Bills

#### A. Connecticut Senate Bill 891

On June 14, 2021, the Governor of Connecticut signed into law Connecticut Senate Bill 891, entitled “An Act Concerning The Ezequiel Santiago Foreclosure Mediation Program And Other Alternatives To Foreclosure” (the “Bill”).<sup>294</sup> As the Bill's name indicates, one subject of the Bill was the Ezequiel Santiago Foreclosure Mediation Program (the “Program”), originally created on 2008.<sup>295</sup> Prior to passage of the Bill, the Program would have expired in 2023.<sup>296</sup> The Bill's passage extended the Program six years until 2029.<sup>297</sup> The Ezequiel Santiago Foreclosure Mediation Program has been very successful in abating foreclosures.<sup>298</sup>

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<sup>286</sup> Ala. Ass'n of Realtors v. Dep't of Health and Hum. Servs., 141 S.Ct. 2485, 2487 (2021) (“Realtor associations and rental property managers in Alabama and Georgia sued to enjoin the CDC's moratorium”).

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* at 2488.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> Alabama Ass'n of Realtors, 141 S. Ct. at 2489–90.

<sup>293</sup> *Id.* at 2490. (“It is up to Congress, not the CDC, to decide whether the public interest merits further action here.”).

<sup>294</sup> S.B. 891, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021).

<sup>295</sup> Conn. S.B. 891 at 1; *Kasser Leads Senate Passage of COVID-19 Related Foreclosure Protections*, GREENWICH FREE PRESS (May 13, 2021), <https://greenwichfreepress.com/news/government/kasser-leads-senate-passage-of-covid-19-related-foreclosure-protections-159283>.

<sup>296</sup> Conn. S.B. 891 at 3.

<sup>297</sup> *Id.*

<sup>298</sup> GREENWICH FREE PRESS, *supra* note 295 (“Since its inception in 2008 – at the height of the recession and housing crisis – this program has conducted over 32,000 foreclosure mediations, with 71% of homeowners remaining in their homes.”).

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**B. Delaware Senate Bill 101**

On May 5th, Delaware State Senators Bryan Townsend and Mary Pinkney introduced Delaware Senate Bill 101, entitled “An Act To Amend Title 25 Of The Delaware Code Relating To The Residential Landlord-tenant Code” (the “Bill”).<sup>299</sup> The Bill is currently engrossed in the Senate.<sup>300</sup> While the majority of the Bill is spent creating a right to counsel for tenants in judicial proceedings,<sup>301</sup> Section 3 of the Act is most relevant to this Update because it creates a Residential Eviction Diversion Program (the “Program”).<sup>302</sup> The Bill requires that the Program be created “Not later than 270 days after [the effective date of this Act], or as soon as possible after the Centers for Disease Control and Prevention lifts the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19.”<sup>303</sup> Under the Program, a landlord seeking to recover possession of property must provide the tenant a notice explaining that conciliation is available.<sup>304</sup> The landlord cannot move forward with eviction proceedings until the Program mandated conciliation and other requirements have been completed or until it has been 30 days since the aforementioned notice was provided and the tenant has not engaged in the Program.<sup>305</sup> The Bill directs:

In designing and implementing the residential eviction diversion program, the Justice of the Peace Court or the Court’s designee may be guided by the Residential Mortgage Foreclosure Mediation Program established by the Superior Court under Superior Court Administrative Directive 2013-2 and any subsequent changes made by Superior Court.<sup>306</sup>

Pursuant to the Bill, a landlord can avoid conciliation and a wait period if the landlord is able to demonstrate by substantial evidence that a tenant has caused or threatens substantial or irreparable harm to person or property.<sup>307</sup>

**C. Florida Senate Bill 412**

On January 4, 2021, Florida State Senator Darryl Rouson filed Florida Senate Bill 412, entitled “Residential Tenancies.”<sup>308</sup> The Bill was referred to the Judiciary Committee on January 15th and introduced to the Senate on March 2nd, but it ultimately died in the Judiciary Committee on April 30th.<sup>309</sup> The Bill required courts in circuits with residential eviction mediation programs to refer all residential eviction matters to those programs.<sup>310</sup> The Bill also contained a provision that would have removed a tenant’s requirement to pay rent

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<sup>299</sup> S.B. 101, 151st Gen. Assemb., Reg. Sess. (Del. 2021), <https://legiscan.com/DE/text/SB101/2021> (last visited Dec. 27, 2021)

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 8.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> S.B. 101, 151st Gen. Assemb.

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> S.B. 412, 27th Leg. Sess., Reg. Sess. (Fla. 2021).

<sup>309</sup> *Id.* at 3.

<sup>310</sup> *Id.*

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into the court to be permitted to claim certain defenses in landlord-tenant disputes.<sup>311</sup> While both provisions are arguably tenant friendly, it is difficult to say which offended the Judiciary Committee.

**D. Georgia House Bill 818**

In March 2021, Georgia State Representatives Marvin Lim, Sandra Scott, Samuel Park, Zulma Lopez, and Mesha Mainor introduced Georgia House Bill 818 entitled “an Act to amend Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, so as to provide for residential eviction diversion programs; to provide for dispossession procedures under certain circumstances; to provide for certain notices to tenants for dispossession proceedings; to provide for mediation; to provide for rules and regulations; to require landlord participation; to provide for defenses; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.”<sup>312</sup> The Bill is currently pending in the Georgia House Judiciary Committee.<sup>313</sup> The Bill gives courts an optional right to create Residential Eviction Diversion Programs.<sup>314</sup> If a court does so, then the Bill provides a right to tenants to receive notice of the program from a landlord who desires eviction and a right to mediation.<sup>315</sup>

**E. Hawaii House Bill 1376**

On January 27, 2021, Hawaii state Representative Troy Hashimoto, et al, introduced Hawaii House Bill 1376, entitled “Relating To The Landlord-tenant Code.”<sup>316</sup> The bill was passed on June 21, 2021 and signed into law by the Hawaii state governor.<sup>317</sup> The bill described itself as follows:

“Extends the required period for a notice of termination of the rental agreement from five days to fifteen days. Requires landlords to provide notice with specified terms and enter into mediation. Delays when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation. Requires landlords to provide the notice of termination of the rental agreement to a mediation center that offers free mediation for residential landlord-tenant disputes. Restricts when a landlord may exercise these remedies depending on the amount of rent due. Appropriates funds. Repeals certain provisions one year after expiration of the governor’s final eviction moratorium emergency

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<sup>311</sup> *Id.*

<sup>312</sup> H.B. 818, 2021 Leg., Reg. Sess. (Ga. 2021).

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at 3.

<sup>316</sup> H.B. 1376, 31st Leg., Reg. Sess. (Haw. 2021).

<sup>317</sup> *Id.*

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supplementary proclamation related to the coronavirus disease 2019 pandemic or 12/31/2022, whichever is sooner.”<sup>318</sup>

The bill reflected the concern of the legislature that “a balanced approach is needed to encourage communications and facilitate mediation between landlords and tenants to help reduce the large number of summary possession cases that are expected to follow the expiration of certain COVID-19 emergency proclamations.”<sup>319</sup>

**F. Maine Senate Bill 1508**

On April 13, 2021, Maine state Senator Anne Carney introduced ME SB 1508, titled “An Act To Prevent Homelessness by Reducing Evictions.”<sup>320</sup> The bill was referred to the Judiciary Committee on the same date and was amended by the committee on June 14th and again on June 15th.<sup>321</sup> The bill was passed on June 16th and approved by the governor on June 21st.<sup>322</sup> The bill requires that the state’s judicial branch draft a form to be used in the filing of a forcible entry and detainer action.<sup>323</sup> If the defendant is a residential tenant the plaintiff must include the form with the summons and complaint when executing the service of process.<sup>324</sup> The form is required to include a list of resources that provide legal information and representation available to residential tenants, a list of resources that provide housing counseling available to residential tenants, and a statement that either party may request, or the court may at any time refer the parties to, mediation on any issue.<sup>325</sup> The bill also requires that the plaintiff include a court-approved form the defendant can use to request mediation.<sup>326</sup>

**G. Massachusetts House Bill 2143**

On February 19th, 2021, Massachusetts state Representative Peter Capano introduced MA HB 2143, entitled “Enabling Municipal Pre-foreclose Mediation.”<sup>327</sup> On March 29th, 2021, the bill was Referred to the Joint Committee on Municipalities and Regional Government.<sup>328</sup> The most recent reported action was the scheduling of a hearing to have taken place in late July.<sup>329</sup> The bill proposes to add a new section to Chapter 244 of the

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<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> An Act to Prevent Homelessness by Establishing an Eviction Mediation Program, S.B. 1508, 130th Leg., 1st Spec. Sess. (Me. 2021), <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0485&item=1&snum=130>; see *Actions for LD 1508*, STATE OF ME. LEG., <https://legislature.maine.gov/LawMakerWeb/dockets.asp?ID=280080441> (last visited Nov. 6, 2021).

<sup>321</sup> *Actions for LD 1508*, *supra* note 320.

<sup>322</sup> *Id.*

<sup>323</sup> Me. S.B. 1508 § 6.

<sup>324</sup> *Id.* § 6004-C.1.B.

<sup>325</sup> *Id.* § 6003-C.1.B.(3)–(6).

<sup>326</sup> *Id.* § 6003-C.1.B.(7).

<sup>327</sup> An Act Enabling Municipal Pre-Foreclosure Mediation, H.B. 2143, 192nd Gen. Ct. (Mass. 2021), <https://malegislature.gov/Bills/192/H2143> (last visited Nov. 6, 2021).

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*



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General Laws that would provide municipalities the option to adopt a mediation program as described in the bill.<sup>330</sup> If a municipality adopts the program, any mortgagee desiring to foreclose on a mortgagor would be required to participate in mediation.<sup>331</sup> The mortgagor and mortgagee would be required to engage in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure.<sup>332</sup> The bill defines in detail relevant terms related to how the mediator and parties should compute the cost of foreclosure in comparison to the cost of particular mortgage modifications and alterations designed to maintain the mortgage and avoid foreclosure.<sup>333</sup> Any mortgagee who fails to comply with the requirements of the proposed program would be subject to a \$300 per day fine for every day of noncompliance.<sup>334</sup>

#### IV. Conclusion

The trend of liberalizing state bills regarding various areas of housing policy indicates a widespread concern from legislators that there exists a need to address housing insecurity. This concern extends to both renters and homeowners. While housing insecurity is a nationwide problem, examples such as the CDC's moratorium show the difficulty of federal resolution to the housing insecurity issues. State legislators have turned to increasing the use of mediation to alleviate the concern. While it is apparent that some of the recent state bills were catalyzed by and concerned with the global pandemic, bills such as Connecticut's evidence a long-standing desire to minimize home loss. As such, the bills reflect a general concern regarding housing security as well as a heightened concern brought on by the pandemic.

## II. HIGHLIGHTS

### A. Florida House Bill 441

Florida House Bill 441 gives courts the ability to appoint elder caring coordinators, requires courts to conduct hearings to review the appointment, provides for qualifications, disqualifications, removal, and suspension of coordinators, authorizes courts to award fees and costs incurred by the elderly coordinator, and provides certain parties immunity from liability.<sup>335</sup>

Florida House Bill 441 was filed on January 25, 2021 and first read in the House on March 2, 2021.<sup>336</sup> The bill is sponsored by Republican Representative Brett Hage.<sup>337</sup>

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<sup>330</sup> *Id.*

<sup>331</sup> *Id.* § 35D(c).

<sup>332</sup> Mass. H.B. 2143 § 35D(h).

<sup>333</sup> *Id.*; *see id.* § 35D(a) (“Commercially reasonable alternative”).

<sup>334</sup> *Id.* § 35D(m).

<sup>335</sup> CS/CS/H.B. 441, 27th Leg., 1st Sess. (Fla. 2021).

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

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Procedurally, Florida House Bill 441 was passed on June 9, 2021 after it was approved by the Governor on June 4, 2021.<sup>338</sup>

Prior to its approval, the bill went through the House through the Civil Justice & Property Rights subcommittee and Children, Families, & Seniors subcommittee beginning on February 8, 2021.<sup>339</sup> The bill was favorable to both committees and then sent to the Judiciary Committee on March 30, 2021, where the bill was also favorable.<sup>340</sup> The bill was first read to the House on April 7, 2021 and passed after three readings on April 21, 2021.<sup>341</sup> The Senate received the bill on April 21, 2021 and passed the bill after three readings on April 26, 2021.<sup>342</sup> The bill was then presented to the Governor on June 3, 2021 before its approval on June 4, 2021.<sup>343</sup>

### B. Georgia Senate Bill 234

Georgia Senate Bill 234 amends Title 9 of the Official Code of Georgia Annotated.<sup>344</sup> It relates to the civil practice of governing mediation and those acting during a mediation by providing privileges, waiver and preclusion of privilege, uniformity, and confidentiality and required disclosures by the mediator themselves.<sup>345</sup>

Georgia Senate Bill 234 was introduced in the Senate on February 23, 2021.<sup>346</sup> The bill is sponsored by Republican Senators John Kennedy, Brian Strickland, Ben Watson, and Rob Leverett and Democrat Senators Elena Parent and Harold Jones.<sup>347</sup> Procedurally, Georgia Senate Bill 234 was passed on May 10, 2021 after it was signed by the Governor.<sup>348</sup> The bill has an effective date of July 1, 2021.<sup>349</sup>

Prior to its approval, the bill went through a Senate Substitute and was favorably reported on March 3, 2021.<sup>350</sup> The Senate passed the bill after three readings on March 3, 2021.<sup>351</sup> The bill was first read in the House on March 9, 2021 and the House committee favorably reported the bill on March 18, 2021.<sup>352</sup> The bill was then passed in the House on March 25, 2021 before being sent to the Governor on April 7, 2021.<sup>353</sup>

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<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> CS/CS/H.B. 441, 27th Leg., 1st Sess. (Fla. 2021).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> Georgia Uniform Mediation Act, S.B. 234, 2021 Gen. Assemb., Reg. Sess. (Ga. 2021) § 2, <https://www.legis.ga.gov/api/legislation/document/20212022/201517> (last visited Nov. 6, 2021).

<sup>345</sup> *Id.*

<sup>346</sup> S.B. 234, 2021 Reg. Sess. (G.A. 2021); *enact*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/59965> (last visited Nov. 6, 2021).

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> S.B. 234 “Georgia Uniform Mediation Act”; *enact*, *supra* note 346.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

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**C. Kentucky Senate Bill 15**

Kentucky Senate Bill 15 was introduced on February 3rd, 2021 by Julie Raque Adams, Robert Stivers, Morgan McGarvey, and David Yates. Floor amendments were introduced in the Senate on February 23rd, but were withdrawn on February 24th. The bill passed in the Senate on the same date by 34 to 2. It was received in the House the following day and passed on March 5th by 84 to 10. The bill was delivered to the governor on March 11th and the governor signed on March 18th. The legislature summarizes the bill:

Amend KRS 243.157 to allow a microbrewer to sell and deliver up to 2,500 barrels of product to any retail licensee and to require a microbrewer to report self-distribution to the distributor; create a new section of KRS Chapter 244 to set forth terms of contracts between microbrewers and distributors; provide severability clause[.]

Additionally, it permits a microbrewer to cease relations with a distributor in exchange for fair market value compensation. If the parties cannot agree on the fair market value, arbitration is required to set the price.

**D. Massachusetts House Bill 2676**

Massachusetts House Bill 2676 was introduced on March 29th, 2021 by James K. Hawkins and Diana DiZoglio. On the same date, the bill was referred to the Joint Committee on Public Service. On June 16th, 2021, a hearing was scheduled for June 23rd, 2021. The bill accompanies a petition to “relative to providing binding arbitration for firefighters and police officers.” The bill resolves to provide arbitration procedures to resolve disputes between organizations representing firefighters or police officers that have remain unresolved after 30 days from the publication of a fact-finders report. The procedures include selection of an arbitrator. Additionally, the bill provides detailed factors for the arbitrator’s decision, which is binding upon the parties.

**E. New York Senate Bill No. 697**

This bill was written by Brad Hoylman (D-27)<sup>354</sup> who represents the Midtown area of New York City in the state senate and serves as the chairman of the Senate Committee on Judiciary.<sup>355</sup> The short description given reads, “Requires employment and consumer dispute arbitrations to be submitted to neutral third-party arbitrators and establishes prohibited arbitration agreements and provisions”<sup>356</sup>. The bill is currently in committee with the Senate Judiciary committee and was referred there on January 6, 2021.

The Bill’s purpose is to bring fairness to commercial arbitration proceedings. It gives a very clear definition of a neutral arbitrator: “an arbitrator or panel of arbitrators each of whom does not have an undisclosed known, direct or material interest, including a

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<sup>354</sup> S.B. S697, 2021 Leg. Sess (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S697> (last visited Nov. 6, 2021).

<sup>355</sup> See *About Brad Hoylman*, N.Y. STATE SEN., <https://www.nysenate.gov/senators/brad-hoylman/about> (last visited Nov. 6, 2021).

<sup>356</sup> S.B. S697, 2021 Leg. Sess (N.Y. 2021).

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financial or personal interest in the outcome of the arbitration proceeding.”<sup>357</sup> It also explicitly deems as void any commercial contract or agreement which does not require arbitrations presided over by a neutral arbitrator. The bill would also require an arbitrator to provide a series of disclosures, which could be the basis for the invalidation of an award should the arbitrator fail to do so. Most notably, the bill prohibits a pre-dispute employment or consumer agreement requiring arbitration. This would invalidate user terms which require a grievance with a seller or provider of services to be handled through arbitration rather than a lawsuit.

The bill remains in committee.

#### F. Oregon Senate Bill 613

Relating to arbitration concerning alleged misconduct by law enforcement officers. This bill was sponsored by Senator Frederick (D-22) who represents a neighborhood in Portland and co-chairs the Joint Committee on Ways and Means Subcommittee On Education. The short description of the bill reads, “Provides that arbitral determinations made in proceedings concerning alleged misconduct by law enforcement officers concerning use of excessive force are nonbinding and subject to review and approval by Department of Public Safety Standards and Training.”

The bill is currently in committee in the Senate Committee on Judiciary. The bill requires any findings in arbitrations regarding misconduct by police officers to be reviewed by the Oregon Department of Public Safety Standards and Training. Additionally, the bill would also require the Public Safety department to review excessive force complaints. No reasoning is given in the bill text. But this appears to be a measure to introduce neutral internal review of cases before they are litigated. When asked, Senator Frederick characterized Police discipline as, “an issue that we really need to deal with. We need to understand who’s going to be making decisions regarding this discipline.” SB 613’s arbitration review requirement appears to be the first of its kind.

#### G. South Carolina House Bill 3868 and Senate Bill 578

South Carolina House Bill 3868<sup>358</sup> was introduced in the House on February 10, 2021 by Republican Representative and Assistant Majority Leader John Taliaferro “Jay” West, IV.<sup>359</sup> The house bill’s companion piece, Senate Bill 578,<sup>360</sup> was introduced in the Senate on February 17, 2021 by Republican Senator Michael W. Gambrell.<sup>361</sup> Both bills add

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<sup>357</sup> An Act to Amend The Civil Practice Law And Rules, In Relation To Arbitration Agreements, S.B. 697, 2021 Leg., Reg. Sess. (N.Y. 2021) § 7500(B), <https://legislation.nysenate.gov/pdf/bills/2021/S697>.

<sup>358</sup> Mandatory Mediation For School Board Disputes, H.B. 3868, 124th Gen. Assemb., Reg. Sess. (S.C. 2021), [https://www.scstatehouse.gov/sess124\\_2021-2022/bills/3868.htm](https://www.scstatehouse.gov/sess124_2021-2022/bills/3868.htm).

<sup>359</sup> *Id.* For more on Rep. West, see *Member Biography: Rep. John Taliaferro “Jay” West, IV*, S.C. LEGISLATURE ONLINE, <https://www.scstatehouse.gov/member.php?code=1903408863> (last visited Nov. 6, 2021).

<sup>360</sup> Mandatory Mediation For School Board Disputes, S.B. 578, 124th Gen. Assemb., Reg. Sess. (S.C. 2021), [https://www.scstatehouse.gov/sess124\\_2021-2022/bills/578.htm](https://www.scstatehouse.gov/sess124_2021-2022/bills/578.htm).

<sup>361</sup> *Id.* For more on Sen. Gambrell, see *Member Biography: Sen. Michael W. Gambrell*, S.C. LEGISLATURE ONLINE, <https://www.scstatehouse.gov/member.php?code=0635227197> (last visited Nov. 6, 2021).

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§ 59-19-105 of the South Carolina Code of Laws.<sup>362</sup> The amended statute would require members of local school district boards of trustees to unsuccessfully attempt to mediate a dispute between the member and the board or another individual member before initiating a lawsuit.<sup>363</sup> When such disputes arise, the parties must submit to nonbinding mediation with a mediator certified by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification.<sup>364</sup> Should this mediation fail, the parties must next provide notice of the unsuccessful resolution attempt and copies of the mediator's report to their legislative delegation and the State Superintendent of Education before either party may pursue legal action.<sup>365</sup> Regardless of who initiates such mediation proceedings, all costs are paid by the school board members in their personal capacity, not corporately by the school board.<sup>366</sup> As of the dates the bills were introduced in their respective chambers, they have been referred to and so far stayed in the House Committee on Education and Public Works<sup>367</sup> and the Senate Committee on Education.<sup>368</sup>

#### H. Rhode Island House Bill 5309

Rhode Island House Bill 5309<sup>369</sup> was introduced in the Rhode Island House on January 29, 2021, soon referred to the House Judiciary committee the same day.<sup>370</sup> The bill was introduced by Democratic Representatives Grace Diaz,<sup>371</sup> Scott A. Slater,<sup>372</sup> Joshua J. Giraldo,<sup>373</sup> Leonela Felix,<sup>374</sup> Deborah A. Fellela,<sup>375</sup> Carlos E. Tobon,<sup>376</sup> Katherine S. Kazarian,<sup>377</sup> and Jose F. Batista.<sup>378</sup> The bill was introduced to amend<sup>379</sup> Rhode Island's

<sup>362</sup> S.C. H.B. 3868; S.C. S.B. 578.

<sup>363</sup> S.C. H.B. 3868 § 59-19-105(A); S.C. S.B. 578 § 59-19-105(A).

<sup>364</sup> S.C. H.B. 3868 § 59-19-105(B); S.C. S.B. 578 § 59-19-105(B).

<sup>365</sup> S.C. H.B. 3868 § 59-19-105(B); S.C. S.B. 578 § 59-19-105(B).

<sup>366</sup> S.C. H.B. 3868 § 59-19-105(C); S.C. S.B. 578 § 59-19-105(C).

<sup>367</sup> S.C. H.B. 3868.

<sup>368</sup> S.C. S.B. 578.

<sup>369</sup> An Act Relating To Property – Residential Landlord And Tenant Act, H.B. 5309, 2021 Gen. Assemb., Reg. Sess. (R.I. 2021), <http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5309.pdf>.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* For more on Rep. Diaz, see *Biography of Rep. Grace Diaz*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/Diaz/default.aspx> (last visited Nov. 6, 2021).

<sup>372</sup> R.I. H.B. 5309. For more on Rep. Slater, see *Biography of Rep. Scott A. Slater*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/Slater/default.aspx> (last visited Nov. 6, 2021).

<sup>373</sup> R.I. H.B. 5309. For more on Rep. Giraldo, see *Biography of Rep. Joshua J. Giraldo*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/Giraldo/default.aspx> (last visited Nov. 6, 2021).

<sup>374</sup> R.I. H.B. 5309. For more on Rep. Felix, see *Biography of Rep. Leonela Felix*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/felix/default.aspx> (last visited Nov. 6, 2021).

<sup>375</sup> R.I. H.B. 5309. For more on Rep. Fellela, see *Biography of Rep. Debora A. Fellela*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/Fellela/default.aspx> (last visited Nov. 6, 2021).

<sup>376</sup> R.I. H.B. 5309. For more on Rep. Tobon, see *Biography of Rep. Carlos E. Tobon*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/tobon/default.aspx> (last visited Nov. 6, 2021).

<sup>377</sup> R.I. H.B. 5309. For more on Rep. Kazarian, see *Biography of Rep. Katherine S. Kazarian*, STATE OF R.I. GEN. ASSEMB., <https://www.rilegislature.gov/representatives/Kazarian/default.aspx> (last visited Nov. 6, 2021).

<sup>378</sup> R.I. H.B. 5309. For more on Rep. Batista, see *Biography of Rep. Jose F. Batista*, STATE OF R.I. GEN. ASSEMB., <http://www.rilin.state.ri.us/representatives/batista/Pages/Biography.aspx> (last visited Nov. 10, 2021).

<sup>379</sup> R.I. H.B. 5309 §1.

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Residential Landlord and Tenant Act.<sup>380</sup> More specifically, the bill is amended to “impose a moratorium on non-essential evictions and mortgage foreclosures during a state of emergency declared by the governor relating to residential property and would establish an eviction diversion program to resolve landlord-tenant eviction disputes.”<sup>381</sup>

If amended, no landlord could pursue any legal action for any “non-essential eviction”<sup>382</sup> or impose any late fees for a mere failure to pay rent, but only if the lateness is due to the governor-declared emergency.<sup>383</sup> Additionally, no court may permit or act upon any sort of legal action<sup>384</sup> and no sheriff or law enforcement officer may serve process or attempt to serve process for a non-essential eviction action.<sup>385</sup>

Instead, the bill’s drafters would require landlords and tenants to participate in a mediated conciliation conference where the parties would address any asserted residential lease violations and to stabilize the tenancy.<sup>386</sup> Prior to the conciliation conference, the mediators would be required to, among many other things, engage with the tenant and landlord to learn the circumstances of both parties, educate the parties, and discuss available resources<sup>387</sup> so they can better aid recommending settlement offers.<sup>388</sup>

Similarly, the bill would amend the statute to prohibit persons entitled to foreclose the equity of redemption in any mortgaged estate from initiating any foreclosure of real estate.<sup>389</sup> Further, the bill would amend the statute to prohibit proceeding with any foreclosure initiated prior to the declared state of emergency until after the conclusion of the declared state of emergency.<sup>390</sup>

The bill, as of March 31, 2021, has been recommended by the Judiciary Committee to be held for further study.<sup>391</sup>

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#### Alabama

Bills Enacted: None.

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<sup>380</sup> R.I. Gen. Law. § 34–18 (2012).

<sup>381</sup> *Id.* § 34-18-5.1(a).

<sup>382</sup> *Id.* The bill’s drafters define this term as “any eviction that does not involve or include allegations of: Criminal activity that poses an imminent and direct threat to the health and safety of other residents, the landlord, or the general public; or Lease violations that pose an imminent and direct threat to the health and safety of other residents, the landlord, or the general public.” *Id.* § 34-18-11(8).

<sup>383</sup> *Id.* § 34-18-5.1(d).

<sup>384</sup> *Id.* § 34-18-5.1(b).

<sup>385</sup> *Id.* § 34-18-5.1(c).

<sup>386</sup> R.I. H.B. 5309 § 34.18-10.1(a)(1).

<sup>387</sup> *Id.* § 34.18-10.1(a)(3).

<sup>388</sup> *Id.* § 34.19-10.1(a)(2)(ii)(C).

<sup>389</sup> *Id.* § 34-27-1.2(a).

<sup>390</sup> *Id.*

<sup>391</sup> *Legislative Status Report: H.B. No. 5309, supra* note 369.

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Bills Pending: 2021 AL S.B. 348 (Amends 6-6-20, Code of Alabama 1975 by requiring mediator in mandatory arbitration to be registered with the Alabama Center for Dispute Resolution or have 16 years state legislator experience).

**Alaska**

Bills Enacted: None.

Bills Pending: 2021 AK S.B. 34 (Public schools may be established through compacts between the commissioner and federally recognized tribes in the state for the establishment of state-tribal education compact schools).

**Arizona**

Bills Enacted: 2021 AZ S.B. 1417 (Adds section 36-3211 to existing statute, pursuant to the section, court may order ADR. The section focuses on the principal in health care directives and others with significant relationship to principal being limited by an Agent).

Bills Pending: 2021 AZ S.B. 1760 (Adds Chapter 9 to existing statute. Sets forth procedures for public employees to refrain from joining labor organization and instead having an exclusive representative - sets forth procedures for negotiations between state and exclusive representative for state employees).

**Arkansas**

Bills Enacted: 2021 AR H.B. 1388 (Amends prior statute, sets forth procedures for voluntary post adoption contact agreement between prospective adoptive parent and birth parent for minor child who is not in care of Dept. of Human Services).

Bills Pending: None.

**California**

Bills Enacted: None.

Bills Pending: 2021 CA A.B. 1033 (Amended. Require the Department of Fair Employment and Housing within the Business, Consumer Services, and Housing Agency, when an employee requests an immediate right to sue alleging a violation of the above-described family care and medical leave provisions by an employer, to notify the employee in writing of the requirement for mediation prior to filing a civil action, if mediation is requested by the employer or employee); 2021 CA S.B. 762 (Adds to Civil Code and amends Code of Civil Procedure. Arbitration invoices from

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provider due upon receipt unless otherwise provided to avoid delay); 2021 CA A.B. 1241 (Amends to establish Department of Fair Employment and Housing to mediate any complaints under Act which prohibits inquiry into rental applicant's criminal record in initial application assessment phase); 2021 CA A.B. 354 (Add and repeal Chapter 11.5 of Division 15 of Public Resource Code. Removes the section on expedited distribution grid interconnection dispute resolution process, adds three-year appliance rebate program); 2021 CA S.B. 502 (Amends and adds to Health and Safety Code. Adds informal dispute resolution process and appeal process for regulations adopted by the department, but the process is not available if public notice is provided and an opportunity to comment prior to the adoption); 2021 CA S.B. 76 (Repeals Chapter 10.6 Excluded Employee Arbitration Act, effective January 1, 2027).

**Colorado**

Bills Enacted: None.

Bills Pending: 2021 CO H.B. 1228 (Related to domestic violence training requirements for court personnel regularly involved in cases with domestic matters - amends duties of mediator).

**Connecticut**

Bills Enacted: 2021 CT S.B. 891 (To make the Ezequiel Santiago Foreclosure Mediation Program permanent and to require that certain alternatives to foreclosure be made available to certain mortgagors).

Bills Pending: None.

**Delaware**

Bills Enacted: None.

Bills Pending: 2021 CT S.B. 101 (Implemented court being permitted to follow guide of Residential Mortgage Foreclosure Mediation Program).

**Florida**

Bills Enacted: 2021 FL H.B. 441 (Creates section 44.407 for an elder-focused dispute resolution process).

Bills Pending: 2021 FL S.B. 630 (For community associations authorizing parties to initiate presuit mediation under certain circumstances; specifying the circumstances under which arbitration is binding on the parties; providing requirements for pursuit mediation); 2021 FL S.B. 412 (In circuits in



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which a residential eviction mediation program has been established, shall refer any matter involving a residential eviction to mediation).

**Georgia**

Bills Enacted: 2021 GA S.B. 234 (Adds Chapter 17 to the Uniform Mediation Act with definitions and other applicability of mediation such as privilege, disclosure, etc.).

Bills Pending: 2021 GA H.B. 818 (Amends code to require notice to tenant of residential eviction diversion program).

**Hawaii**

Bills Enacted: None.

Bills Pending: 2021 HI H.B. 1376 (Requires landlords to provide notice with specified terms and enter into mediation and delays when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation, among other requirements).

**Idaho**

Bills Enacted: None.

Bills Pending: None.

**Illinois**

Bills Enacted: None.

Bills Pending: None.

**Indiana**

Bills Enacted: None.

Bills Pending: 2021 IN H.B. 1037 (Establishes required mediation procedure in cases of property partition once a court has determined the property is heirs property); 2021 IN S.B. 307 (Provides that the taxpayer and the assessing official are required to participate in mandatory mediation of an appeal of an assessment of commercial real property, instead of the preliminary informal meeting process under current law).

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**Iowa**

Bills Enacted: None.

Bills Pending: None.

**Kansas**

Bills Enacted: None.

Bills Pending: None.

**Kentucky**

Bills Enacted: 2021 KY SB 15 (Prohibits a distribution agreement between a microbrewer and a distributor from requiring mediation or arbitration, but does not prohibit the parties from resolving the dispute by retaining an independent mediator or arbitrator while equally sharing the cost. As well, requires arbitration in the event a microbrewer and distributor cannot agree on the fair market value of product outstanding after dissolution of a distribution agreement under certain circumstances).

Bills Pending: None.

**Louisiana**

Bills Enacted: 2021 LA H.B. 386 (In causes of action arising from a disaster within a parish declared by the president of the United States to be subject to a major disaster declaration, judges may provide for mandatory mediation with the goal of expedited dispute resolution using a qualified neutral mediator appointed and compensated in the manner directed by the court).

Bills Pending: None.

**Maine**

Bills Enacted: 2021 ME S.P. 189, L.D. 483 (Clarifies that the Judicial Department is authorized to refer cases to the Court Alternative Dispute Resolution Service for mediation in small claims cases).

Bills Pending: 2021 ME L.D. 1574, S.P. 568 (Established the Logging Dispute Resolution Board as an independent board within the Department of Labor with a purpose to hear disputes related to the logging industry, including disputes regarding pay violations, payout amounts, contract violations, hiring disputes and other topics as determined appropriate by the board);

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2021 ME S.P. 485 (Creates mandatory eviction mediation program that landlords and tenants must enter into prior to eviction judgments being entered by a court).

**Maryland**

Bills Enacted: None.

Bills Pending: None.

**Massachusetts**

Bills Enacted: None.

Bills Pending: 2021 MA H.B. 1144 (Establishes the Massachusetts Foreclosure Mediation Program, whereby mortgagees are required to inform delinquent mortgagors of the right to mediate and mortgagors can request mandatory mediation prior to commencement of foreclosure proceedings); 2021 MA S.B. 630 (Same general provisions as MA H.B. 1144); 2021 MA. H.B. 2143 (Authorizes municipalities to create mandatory eviction mediation programs and provides framework for administration of such programs); 2021 MA H.B. 1630 (Establishes parameters for arbitration of family law disputes, with such parameters addressing the contents of arbitration agreements, powers of the arbitrator, qualification of arbitrators, and protection of participants and children); 2021 MA H.B. 2676 (Provides for binding arbitration of disputes involving firefighters or police officers and the city, town, or district that employs them).

**Michigan**

Bills Enacted: None.

Bills Pending: None.

**Minnesota**

Bills Enacted: None.

Bills Pending: 2021 MN S.F. 1583 (Removes existing notice requirement that informs parents of alternative dispute resolution right in situations where school district makes determinations regarding special education placement for a child).

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**Mississippi**

Bills Enacted: None.

Bills Pending: None.

**Missouri**

Bills Enacted: HB 273 (Modifies provisions relating to professional registration).

Bills Pending: HB 953 (Repeals and establishes provisions relating to alternative dispute resolution); HB 195 (Requires arbitration agreements for certain disputes to be in a separate agreement); HB 1197 (Creates mediation provisions relating to a homicide prevention hotline); SB 471 (Creates provisions relating to the “Office of State Ombudsman for Inmates in the Custody of the Department of Corrections”); HB 949 (Creates arbitration provisions relating to access to long-term care facilities); HB 417 (Creates the election anti-fraud fairness act, mandating arbitration in certain situations); SB 261 (Modifies provisions relating to unanticipated out-of-network health care); SB 179 (Modifies provisions relating to the enforcement of arbitration awards and intervention in court proceedings for insurance companies); HB 922 (Modifies the statute of limitations for personal injury claims from five years to two years); SB 119 (Modifies provisions relating to telecommunication practices).

**Montana**

Bills Enacted: SB 104 (Uniform Family Law Arbitration Act); HB 445 (Generally revises automobile franchise laws); SB 265 (Revising electrical generation arbitration laws); HB 537 (Revise venue laws).

Bills Pending: None.

**Nebraska**

Bills Enacted: LB 595 (Change Office of Dispute Resolution to Office of Restorative Justice and Dispute Resolution and change powers and duties of the office); LB 997 (Adopt the Out-of-Network Emergency Medical Care Act)

Bills Pending: LB 973 (Adopt the Homeowner Association Act); LB 655 (Changing division fence provisions).

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**Nevada**

- Bills Enacted: SB 1 (Authorizes certain courts to grant a stay for certain evictions); SB 2 (Revises provisions relating to peace officers).
- Bills Pending: None.

**New Hampshire**

- Bills Enacted: None.
- Bills Pending: SB 143 (adopting omnibus legislation relative to certain agency requests); HB 336 (establishing a condominium dispute resolution board).

**New Jersey**

- Bills Enacted: AB 1063 (Enhances homeowner notification of foreclosure mediation program requirements); SB 699 (Requires training for DOE arbitrators to include issues related to cultural diversity and bias); SB 993 (Concerns arbitration for certain non-teaching school staff).
- Bills Pending: AB 5332 (Concerns collective bargaining for farm workers); SB 3458 (Revises out-of-network arbitration process); AB 5107 (Clarifies certain Superior Court review and arbitration proceedings are available to all non-civil service law enforcement officers).

**New Mexico**

- Bills Enacted: SB 409 (Transfer pipeline safety from PRC to OCD); HB 229 (Land grant natural resource protection).
- Bills Pending: HB 128 (school personnel background & training).

**New York**

- Bills Enacted: None.
- Bills Pending: SB 497 (Establishes a pilot program for conflict resolution centers); SB 2100 (Relates to providing for vacation of an arbitration award on the ground that the arbitrator was affiliated with a party, or has a financial interest in a party or the outcome); SB 697 (Requires employment and consumer dispute arbitrations to be submitted to neutral third party arbitrators, and establishes prohibited arbitration agreements and provisions); AB 3297 (Relates to arbitration organizations); AB 2349 (Enacts the peer-to-peer car sharing program act); AB 6911 (Relates to

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unfair claim settlements after a natural disaster); SB 144 (Relates to the validity of mandatory arbitration clauses printed on tickets by common carriers); SB 565 (Authorizes the vacating of an arbitration award on the basis of arbitrator disregard of the law); AB 1189 (Prohibits mandatory arbitration agreements in consumer and employment contracts); AB 1450 (Relates to requiring mandatory arbitration clauses in certain consumer contracts to be disclosed to the consumer); AB 2139 (Provides that arbitration awards in consumer and employment disputes, where the arbitration is conducted pursuant to a contract, shall include all issues in dispute and findings thereon); AB 3375 (Makes provisions relating to the collateral estoppel effect of issues decided by certain arbitrators); SB 3807 (Relates to establishing a process for neutral arbitrators to review certain disciplinary decisions and penalties imposed on members of the New York city police department); AB 391 (Relates to warranties and protections for purchasers of new and used motor vehicles); SB 2965 (Prohibits transportation network companies from including mandatory arbitration clauses in user agreements for certain offenses); SB 3581 (Relates arbitration of claims under the comprehensive motor vehicle insurance reparations act); AB 4108 (Requires the New York State Power Authority and its employees to submit all unresolvable contract negotiations to binding arbitration); AB 4659 (Prohibits the state from entering into certain contracts with companies requiring employees to stipulate to binding arbitration for all disputes); AB 4077 (Requires certain public transit authorities and their employees to submit all unresolvable contract negotiations to binding arbitration); AB 6909 (Enacts the 'consumer credit fairness act); SB 2891 (Relates to procedures to be followed in appointing a hearing officer for removal and disciplinary action against certain public employees); AB 398 (Relates to prohibiting contract provisions that waive certain substantive and procedural rights).

**North Carolina**

Bills Enacted: HB 32 (An act to enact the Uniform Collaborative Law Act, as recommended by the general statutes commission).

Bills Pending: HB 113 (An act to make various changes and technical corrections to the laws governing the Administration of Justice); HB 645 (An act repealing the prelitigation mediation requirement in public record disputes).

**North Dakota**

Bills Enacted: SB 2215 (relating to deadlines for teacher negotiations between school districts and representative organizations).

Bills Pending: None.

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**Ohio**

Bills Enacted: None.

Bills Pending: SB 119 (To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression); HB 66 (To enact the “Theft Victims’ Restitution Act” to allow restitution for the cost of accounting or auditing done to determine the extent of a victim’s economic loss).

**Oklahoma**

Bills Enacted: HB 1146 (state government; creating the Civil Service and Human Capital Modernization Act; State Employee Dispute Resolution Program; Merit Protection Program); HB 2747 (Cities and towns; collective bargaining; firefighters; police officers); SB 361 (Prohibiting statements made in peer counseling from being used as evidence).

Bills Pending: HB 2125 (Oklahoma Surprise Billing Protection Act); HB 2850 (Waters and water rights; allowing compacts with other states for the sale of water).

**Oregon**

Bills Enacted: None.

Bills Pending: SB 110 (Relating to resolving adverse health care events); HB 2930 (Relating to standards concerning law enforcement officer conduct; declaring an emergency); HB 2372 (Relating to terminations of residential tenancies without tenant cause); SB 613 (Relating to arbitration concerning alleged misconduct by law enforcement officers); SB 690 (Relating to strikes by transit workers); HB 2061 (Relating to mandatory payments to labor organizations by public employees); SB 670 (Relating to matters concerning apprenticeship programs as mandatory subject of collective bargaining); SB 688 (Relating to arbitration proceedings concerning law enforcement officer conduct); HB 2393 (Relating to motor vehicle liability insurance coverage); HB 3134 (Relating to vehicle crashes).

**Pennsylvania**

Bill Enacted: H.B. 966 / S.B. 115 (Art. IX.c would permit any disputes related to the Nurse Licensure Compact that arise among party states and between party and non-party states to be resolved by mediation and then arbitration);

Bills Pending: H.B. 404 (establishes an ombudsman to, among other things, advocate on behalf of children with mental health disorders; identify barriers to effective mental health treatment and proposed solutions; and monitor and

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ensure compliance with relevant statutes, regulations, rules and policies pertaining to children’s behavioral health services); H.B. 847 (requires school entities to offer education of conflict resolution, including the mediation process); H.B. 1366 (adopts the Uniform Family Law Arbitration Act); H.B. 1392 (absent exceptions, requires parties to mediate for the resolution of a custody dispute in accordance with the child’s best interests); H.B. 1551 (prohibits employers or employees from retaliating in any manner against an employee who has opposed an unlawful employment practice or who has made a charge, testified, assisted or participated in any manner in an investigation or proceeding such as arbitration and mediation proceedings); S.B. 623 (requires the manufacturer or importing distributor to submit to binding mediation in the event said manufacturer or importing distributor and a Pennsylvania manufacturer of malt or brewed beverages cannot renegotiate the written agreement by the fifth anniversary despite good faith efforts).

**Rhode Island**

- Bill Enacted: H.B. 5780 (§ 27-1.1-1(g)(iv)(B) mentions alternative dispute resolution only in passing, saying “[n]othing in this provision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms[.]”).
- Bills Pending: S.B. 304 (§ 27-82-6 creates a method encouraging alternative dispute resolution between health care insurers and health care providers relating to surprise medical bills for emergency and other services); H.B. 5074 / S.B. 650 (requires department of health to establish an informal dispute resolution to address any changes to department of health violations); H.B. 5194 / S.B. 183 (§ 5-34.3-11.1(c) requires upon request by a party state, the commission to attempt to resolve disputes related to the compact that arise among party states and between party and non-party states via mediation and, if mediation fails, arbitration); H.B. 5309 (imposes a moratorium on non-essential evictions/mortgage foreclosures during a state of emergency declared by the governor relating to residential property and establishes an eviction diversion program to resolve landlord-tenant eviction disputes); H.B. 5311 / S.B. 882 (provides that any arbitration award issued shall be binding in the mechanics’ lien action and shall be res judicata); H.B. 5402 / S.B. 887 (establishes new factors for the interest contract arbitration board for municipal employee unions as well as granting the board power to render an award over all negotiated matters, including the expenditure of money); H.B. 5833 / S.B. 454 (§ 16-24-20(a) establishes a Rhode Island ombudsperson for parents, guardians and caretakers of students with disabilities students with disabilities or students with disabilities who are over the age of eighteen (18) through twenty-one (21) and enrolled in school); H.B. 5846 / S.B. 876 (§ 40.1-22.2-2 creates a developmental disabilities ombudsperson program to be administratively



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attached to the department of administration); H.B. 5933 (§ 16-2-17(e) requires school districts to provide for alternative programs, such as conflict resolution, restorative justice practices, and peer mediation, within the school to reduce the number of out-of-school suspensions); and H.B. 6352 / S.B. 196 (§ 28-52.1-10(a) prohibits employers and employees from retaliating in any manner against an employee who has opposed any unlawful employment practice under this chapter, or who has made a charge, testified, assisted or participated in any manner in an investigation or proceeding, including, but not limited to arbitration and mediation proceedings).

Bill Vetoes: H.B. 6066 / S.B. 699 (Amended § 39-26.3-4.1(g) requires the public utilities commission to appoint an independently qualified ombudsman to, among other things, oversee the distribution company's administration of interconnection and provide dispute resolution assistance upon written request by a party to a dispute).

**South Carolina**

Bills Enacted: None

Bills Pending: S.B. 422 (Newly-added § 32-2-10(E) refers to Alternative Dispute Resolution in Hold Harmless Clauses in Construction contracts only in passing); H.B. 3073 (requires mediation within 30 days after ejection action is instituted by the landlord); H.B. 3683 (enacts the South Carolina Ratepayer Protection Act Of 2021 and newly-added § 58-3-290 permits mediation for matters or cases that are pending before the Public Service Commission); H.B. 3794 (creates minimum standards to guide local law enforcement agencies in creating mediation processes for law enforcement misconduct complaints); H.B. 3868 / S.B. 578 (requires non-binding mediation as a condition precedent for lawsuits between local school district board of trustee members and the board or other members); and H.B. 3893 (reporter comment 2 regarding § 33-33-90 specifies unincorporated nonprofits may participate in all forms of adjudication and alternative dispute resolution).

**South Dakota**

Bills Enacted: H.B. 1003 (Newly-added § 58-14-16.25 clarifies “[n]othing in this subdivision limits or alters the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms[.]”); H.B. 1065 (§ 13C requires alternative dispute resolution by a member state relating to the Emergency Medical Personnel Licensure Interstate Compact); and H.B. 1191 (permits alternative dispute resolution, other than binding arbitration, whenever two or more local governmental bodies are engaged in a legal dispute).

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Bills Pending: H.B. 1052 (amends § 25-4A-23 but stills permits a party to request mediation regarding child custody); and H.B. 1241 (Newly added § 25-4A-29 requires parents who have petitioned for divorce, and parents who have petitioned for child custody or visitation, to participate in a parent education program to develop their understanding, among other things, of dispute resolution options).

**Tennessee**

Bills Enacted: H.B. 197 / S.B. 135 (requires a public record custodian to request mediation before seeking to enjoin a harassing record requestor); H.B. 455 / S.B. 161 (allows mediation and binding dispute resolution between states that enter the Psychology Interjurisdictional Compact); and H.B. 758 / S.B. 1417 (enacts a 4-year statute of limitations for actions, including in arbitration, brought against the government relating to any deficiency in the design, planning, supervision, observation of construction, or construction of a trolley or light rail system).

Bills Pending: H.B. 1322 / S.B. 948 (§ 68-11-1610(e) allows applicants within fifteen (15) days of the approval or denial by the Health Services and Development Agency to mediate any disputes).

**Texas**

Bills Enacted: H.B. 3318 / S.B. 1129 (§ 1055.151 permits courts to refer contested guardianship proceedings to mediation. § 155.301 requires these mediators to undergo specific training); and H.B. 3924 / S.B. 1973 (§ 1275.004 of the Out-of-Network Claim Resolution says alternative dispute resolution methods are available for health benefit plans).

Bills Pending: H.J.R. 26 (Art. XII.C permits mediation involving disputes regarding the compact. Art. XII.G permits the state to seek mediation if the State failed to exhaust Tribal administrative remedies); H.J.R. 112 / S.J.R. 41 (Art. XII.C permits mediation involving disputes regarding the compact. Art. XII.G permits the state to seek mediation “if the State failed to exhaust Tribal administrative remedies); H.B. 1598 / S.B. 1980 (§ 512.002 clarifies the office of independent oversight ombudsman for the Texas Department of Criminal Justice is created for the purpose of monitoring the conditions of confinement and treatment of offenders, investigating, evaluating, and securing the rights of offenders, and assisting the department in improving its operations.); H.B. 2869 (§ 174.1511 permits arbitration between a public employer and an association that is a bargaining agent for the police officers of a political subdivision’s police department; § 174.301 permits the same for firefighters); H.B. 3245 (§ 6 simply changes subsection numbers but still permits friends of the court to coordinate nonjudicial efforts to improve compliance with a court order relating to child support

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or possession of or access to a child by use of one or more of the alternate dispute resolution methods under Chapter 154 or a family mediator); H.B. 3860 / S.B. 1540 (§ 113.103 encourages the use of alternative dispute resolution for discrimination in public accommodation claims); H.B. 4115 / S.B. 999 (§ 1467.0555 allows ground ambulance service providers to elect to mediate multiple claims under specific circumstances); S.B. 1628 (Amended § 531.9931(2) adds the specific duty of the ombudsman to receive complaints from a person providing foster care services for children and youth, including child-placing agencies, agency foster homes, specialized child-care homes, general residential operations, cottage home operations, and continuum-of-care residential operations); and S.B. 2060 (permits similar powers and responsibilities/duties to independent ombudsmen within the Texas Military Department as those for the Department of Justice Ombudsman).

Bills Pending: None.

**Utah**

Bill Enacted: H.B. 286 (Minor changes overall. § 110 of the Bill amends § 78B-6-207 regarding mediation minimum procedures. § 120 of the Bill amends § 78B-11-121 regarding changing arbitrator awards).

Bill Pending: H.B. 317 (Eminent domain amendments made changes only to conditions precedent for takings. Sections regarding ombuds relate to free neutral property valuations. *See* Newly-added § 78B-6-504(2)(ii)(5)).

**Vermont**

Bills Enacted: H.B. 81 (§§ 6, 6a makes substantially similar changes as H.B. 63 below and primarily just changes “arbitration panel” to “VLRB, arbitrator, or arbitrators”); H.B. 99 / S.B. 48 (§ 1647i(c) requires the Commission to promulgate rules mediation and binding dispute resolution for disputes relating to the state’s adoption of the Nurse Licensure Compact); and H.B. 366 (§ 365 mentions Vermont’s State Long-Term Care Ombudsman but only in passing; no other relevant amendments).

Bills Pending: H.B. 63 (commission created to resolve collective bargaining disputes regarding public ed. worker healthcare. § 5 amends Stat. § 2104 to require mediation then arbitration of disputes related to the commission); S.B. 72 (§§ 5909(2), 5911(h)(10), 5912(b)(2) requires the commission to promulgate rules and create procedures for mediation and binding dispute resolution relating to disputes from the Interstate Compact on the Placement of Children); and S.B. 78 (Amends Stat. § 1018 to allow arbitration of disputes instead of allowing only the Board to resolve said dispute. Repeals § 1019).

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**Virginia**

- Bills Enacted: None.
- Bills Pending: H.B. 1392 (§ 2.2-501.1.B. creates an Ombudsman to mediate disputes between people requesting public records from state agencies); H.B. 1986 (§ 53.B permits George Mason University to require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure. § 56 allows George Mason University to enter into agreements to submit disputes arising from contracts entered into pursuant to these rules to arbitration and utilize mediation and other alternative dispute resolution procedures, provided that such procedures shall be nonbinding); and H.B. 2299 / S.B. 1288 (§ 22.1-214.B is amended but keeps the language encouraging mediation to resolve disputes regarding program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations for children with disabilities and their parents).

**Washington**

- Bills Enacted: H.B. 1044 (created prison to postsecondary education pathways. “The program of education may include but not be limited to . . . conflict resolution counseling[.]”); H.B. 1320 / S.B. 5297 (§ 131 amends RCW 26.09.015 and 2020 c 29 s 13 to better encourage mediating marital/family disputes); Partially Vetoed S.B. 5160 (New § 7 requires the administrative office of the courts to establish a court-based eviction resolution pilot program. § 10 amends RCW 59.18.057 and 2020 c 315 s 2 to, among other things, inform tenants that free or low-cost mediation services to assist in nonpayment of rent disputes before any judicial proceedings occur); and S.B. 5436 (§ 4 regards non-mandatory subjects of collective bargaining over the content of reports by ombuds and the selection of ombuds and their staff who oversee law enforcement personnel).
- Bills Pending: None

**West Virginia**

- Bill Enacted: H.B. 2006 (Addresses alternative dispute resolution only in passing. § 21-11A-2(7) remains and says “[t]his article does not apply to any action...[a]gainst a contractor if the parties to the contract agreed to submit claims to mediation, arbitration or another type of alternative dispute resolution[.]”).
- Bills Pending: H.B. 2251 (Newly-added § 30A-1-15(a) (Non-Medical, Baccalaureat-Level Professions) and § 30B-1-14(a) (Non-Medical, Non-Baccalaureat-Level Minimum Professions) permits any board referred to in this chapter

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to, on its own motion or by stipulation of the parties, refer any complaints against persons licensed under this chapter to mediation); H.B. 2578 (creates the Alternative Dispute Resolution Act to provide parties to a lawsuit with choices for resolving disputes that save time and money, when compared to formal court proceedings, by encouraging alternative dispute resolution (ADR) procedures with limited discovery, confidential proceedings, and nonjudicial assistance in evaluating the parties' claims); H.B. 3124 (§ 21-1F-4(5) exempts judicial employees, including arbiters and mediators, from being able to collectively bargain. For other public employees, § 21-1F-8(a) & (b) requires stepped mediation, that is mediation and then, if there still is a dispute, submission to arbitration); and S.B. 687 (§ 55-7B-6(g)-(h) entitles healthcare providers to prelitigation mediation before a qualified mediator upon written demand to the claimant for medical professional liability actions).

**Wisconsin**

**Bills Enacted:** AB 68 / SB 111 (appropriates funding to pay for the state's costs in collective bargaining grievance arbitrations); and A.B. 101 / S.B. 107 (upholds use of alternative dispute resolution despite amendments by requiring parties who are directed to participate in an initial mediation session to submit their proposed parenting plans to family court services or the assigned mediator at least 10 days before the initial mediation session).

**Bills Pending:** A.B. 146 / S.B. 185 (appropriates \$300,000 for grants or loans to eligible organizations to assist persons or families of low or moderate income to participate in diversion programming. "Diversion programming" is short-term intervention that supports persons or families of low or moderate income to utilize conflict resolution and mediation skills to reconnect the individuals or families to their support systems); S.B. 361 (Newly-created § 281.79(2)-(9) permits municipalities that contains private water supplies that have been contaminated by perfluoroalkyl or polyfluoroalkyl substances and that is entitled to obtain an alternate source of water or to connect to a public water supply or another private water supply to request a mediator to assist in negotiations if the alternate source of water is to be provided by or the connection is to be made to a water supply located within another municipality); and S.B. 412 (§ 448.987(11)(c) permits disputes regarding the Occupational Therapy Licensure Compact to be resolved via mediation and arbitration).

**Bills Pending:** None.

**Wyoming**

**Bills Enacted:** S.F. 14 (§ 26-5-112(a)(vi)(D)(II) specifies nothing in this subdivision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent

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such agreements are unenforceable under applicable insolvency or delinquency laws); S.F. 76 (§ 9-12-1510(a)(v)(A) permits the Wyoming Business Council to participate in arbitration of determining reasonable rates in the event of unsuccessful negotiations between the funding recipient and another broadband provider for access to the infrastructure); and S.F. 130 (§ 21-3-307(d) permits the phased application process prescribed by state superintendent rule and regulation to provide a process for mediation of disputes concerning completeness of an application between the applicant and authorizer, which would be subject to W.S. 1-43-101 through 1-43-104, and would allow either party to initiate mediation and would impose costs of mediation equally upon both parties).

Bills Pending: None.