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LEGISLATIVE UPDATE

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Legislative Update

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The 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.***

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I. LEGISLATIVE FOCUS SECTION

In this section the authors pick a topic relating to alternative dispute resolution that they see developing in multiple states and discuss their implications along with their growth or popularity.

WHICH WAY ARE WE GROWING? STATE LEGISLATURES' INCONSISTENT ATTITUDES TOWARDS FORECLOSURE MEDIATION PROGRAMS*

Bill Number:	Nevada Assembly Bill 513
Bill Status:	Introduced on May 15, 2023; failed June 6, 2023. ¹
Bill Number:	Massachusetts House Bill 1083
Bill Status:	Introduced on May 30, 2023. ²
Bill Number:	Massachusetts House Bill 2036
Bill Status:	Introduced on May 30, 2023. ³

Summary (all): The Nevada bill attempted to end the established Foreclosure Mediation Program. The Massachusetts bills aim to establish the first state-wide foreclosure mediation program and empower municipalities to create pre-foreclosure programs.

I. INTRODUCTION

In the wake of the economic crisis following the collapse of the United States housing market, five to six million families lost their homes to foreclosure between 2007 and 2014.⁴ However, as the housing market recovers, banks are growing frustrated with the process delays required to pursue foreclosure alternatives with customers.⁵ States have passed hundreds of laws modifying the foreclosure process, in an effort to “encourage negotiated alternatives to foreclosure sales, to address responsibility for abandoned properties, to reduce redemption periods, and to protect tenants in foreclosed homes.”⁶ One of those legislative modifications was the promulgation of Foreclosure Mediation Programs.⁷ Currently, twenty states have established foreclosure mediation programs.⁸ The vast majority of states with these programs are judicial foreclosure states.⁹ In judicial foreclosure states, the entire

1. Assemb. B. 513, 82d Leg., Reg. Sess. (Nev. 2023).

2. H.B. 1083, 193d Gen. Ct., Reg. Sess. (Mass. 2023).

3. H.B. 2036, 193d Gen. Ct., Reg. Sess. (Mass. 2023).

4. Alan M. White, *Foreclosure Diversion And Mediation In The States*, 33 GA. ST. U. L. REV. 411, 413 (2017).

5. *Id.* at 414.

6. *Id.* at 415.

7. U.S. DEP'T OF HOUS. & URB. DEV. & DEP'T OF JUST., EMERGING STRATEGIES FOR EFFECTIVE FORECLOSURE MEDIATION PROGRAMS (2010).

8. The states with foreclosure mediation programs are: Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Nevada, New Hampshire, New Jersey, New Mexico, New York, Nevada, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. *Id.* at 9–11.

9. Heather S. Kulp, *Foreclosure Mediation and Mitigation Program Models*, RESOL. SYS. INST., https://www.aboutrsi.org/files/ForeclosureMediationProgramModels_May2011.pdf (May 17, 2011).

foreclosure process is managed by the court.¹⁰ The foreclosure process is more rapid in non-judicial foreclosure states where a foreclosure can be completed in as little as one month so long as the homeowner does not have a valid defense.¹¹ Though many of the statutes originally had sunset provisions, some have extended the date and some even expanded the scope of their programs.¹² Despite the success of these programs, half of the states did not adopt them.¹³ When local governments attempt to begin such programs, they face opposition from banks, who have successfully challenged some programs “on the grounds that they conflict with state law or exceed local government authority.”¹⁴ With nearly half of the country utilizing established foreclosure mediation programs (and the number potentially growing to twenty-one this year), why would the Nevada Assembly attempt to reverse course?

Foreclosure rates are again on the rise.¹⁵ Nevada and Massachusetts are non-judicial foreclosure states.¹⁶ As of February 2023, Nevada ranked in the top five states with the highest foreclosure rates in the nation.¹⁷ The state suffered a 3.5% foreclosure rate in early 2023.¹⁸ Massachusetts had a 1.4% foreclosure rate during the same period.¹⁹ This article examines the attitudes towards Foreclosure Mediation Programs in both states.

A. Nevada’s Foreclosure Mediation Program

The Nevada State Legislature funded the Nevada Foreclosure Mediation Program in 2009.²⁰ This program resulted from the state’s significant foreclosure rate and the lack of judicial recourse for affected homeowners.²¹ Nevada’s Foreclosure Mediation Program requires foreclosure mediators to “submit a mediation report that details compliance by the mortgage servicer (deed of trust beneficiary), homeowner participation, recommendations for sanctions, and outcome of the mediation.”²² By 2015, Nevada’s state’s economy began recovering and participation in the program waned.²³ The foreclosure mediation program was not initially intended

10. *Judicial vs. Non-Judicial Foreclosure Under the Law*, JUSTIA, <https://www.justia.com/foreclosure/judicial-vs-non-judicial-foreclosure/> (Oct. 2023).

11. *Id.*

12. White, *supra* note 4, at 417.

13. *Id.*

14. *Id.*

15. Nora Epstein, *Foreclosure Rates for All 50 States in July 2023*, SOFI LEARN (Aug. 17, 2023), <https://www.sofi.com/learn/content/foreclosure-rates-for-50-states/>.

16. Amy Loftsgordon, *Chart: Judicial v. Nonjudicial Foreclosures*, NOLO, www.nolo.com/legal-encyclopedia/chart-judicial-v-nonjudicial-foreclosures.html (last visited Dec. 18, 2023).

17. Ruchi Gupta, *US Foreclosure Rate by Year, State and City (2023)*, FINMASTERS, <https://finmasters.com/foreclosure-rate/#Foreclosure-Activity-by-State> (May 25, 2023).

18. *Id.*

19. *Id.*

20. Barbara Buckley, *Nevada’s Foreclosure Program Turns Two Years Old: Is It Working?*, NEV. LAW., Mar. 2012, at 7.

21. *Id.*

22. White, *supra* note 4, at 443.

23. See The Associated Press, *Nevada foreclosure mediation program winding down at end of year*, NEWS4 (Dec. 25, 2016, 7:05 AM), <https://mynews4.com/news/local/nevada-foreclosure-mediation-program-winding-down-at-end-of-year>.

to be permanent.²⁴ However, in 2017, the Nevada senate revived the legislation with S.B. 490 (effective on June 12, 2017) and reinstated the Foreclosure Mediation Program.²⁵ This year, members of the Nevada assembly again attempted to end the state's Mortgage Mediation Program with Assembly Bill ("A.B.") 513.²⁶ The bill was introduced on May 15, 2023, and died on June 6, 2023.²⁷

B. *Massachusetts's Proposed Foreclosure and Pre-Foreclosure Mediation Programs*

At nearly the same time Nevada's assembly made its attempt to end the program for its state, the Massachusetts Legislature introduced House Bill ("H.") 1083, which, if enacted, would establish the Massachusetts Foreclosure Mediation Program.²⁸ Unlike Nevada, Massachusetts has yet to successfully create a state-wide foreclosure mediation program.²⁹ Related legislation introduced simultaneously would give municipalities the authority to establish pre-foreclosure mediation programs with the goal of preventing the foreclosure of residential properties.³⁰ Massachusetts's bills do not include budget projections for the cost of the proposed programs.

II. THE COSTS ASSOCIATED WITH FORECLOSURE MEDIATION PROGRAMS

Nevada's Foreclosure Mediation Program has a three million dollar annual budget, which is financed through associated fees charged to the lenders and mortgagees.³¹ To members of the Assembly, the housing market has "turned the corner" on the housing crisis, and the costs of the program no longer justify the expenses paid to keep the program running.³² However, there are farther-reaching economic, societal, and intangible psychological costs that Nevada's Mortgage Mediation Program prevents.³³

A. *The Hidden Costs of Foreclosure*

The foreclosure crisis of the mid-2000s had devastating effects on the national housing market, those of depressed sales and diminished property values.³⁴ Not

24. Amy Loftsgordon, *Foreclosure Mediation Program in Nevada*, NOLO, <https://www.nolo.com/legal-encyclopedia/foreclosure-mediation-program-in-nevada.html> (last visited Dec. 18, 2023).

25. S.B. 490, 79th Leg., Reg. Sess. (Nev. 2017).

26. Assemb. B. 513, 82d Leg., Reg. Sess. (Nev. 2023).

27. *Id.*

28. H.B. 1083, 193d Gen. Ct., Reg. Sess. (Mass. 2023).

29. MADHAWA PALIHAPITIYA & KAILA O. EISENKRAFT, MASS. OFF. OF PUB. COLLABORATION, A STUDY FOR THE DESIGN AND ADMINISTRATION OF A SUCCESSFUL FORECLOSURE MEDIATION PROGRAM IN MASSACHUSETTS 7 (2013).

30. H.B. 2036, 193d Gen. Ct., Reg. Sess. (Mass. 2023).

31. Phil Hall, *Nevada Considers Ending Foreclosure Mediation Program*, NAT'L MORTG. PRO. (May 8, 2015), https://nationalmortgageprofessional.com/news/53929/nevada-considers-ending-foreclosure-mediation-program?utm_source=MadMimi&utm_medium.

32. *Id.*

33. See Buckley, *supra* note 20.

34. See *id.*

only this, but the impact of foreclosure on a family's well-being is potentially ruinous.³⁵ The large portion of the individuals facing foreclosure during this economic crisis were young adults, that typically received lower wages, and had little to no savings.³⁶ Many of the young adults were also from ethnic or racial minority groups, and without sufficient "private safety nets" in the form of extended family with resources available and willing to help prevent foreclosure.³⁷ The consequences of losing one's home are especially significant. Those who lost their homes to foreclosure had an increased probability of also experiencing employment and/or health crises.³⁸

The group facing the most significant crisis in the event of foreclosure, is children. The impact of increased foreclosure rates for children, correlated with higher suicide rates, poor mental health outcomes, and a greater number of uninsured Americans.³⁹ Perhaps the greatest impact on children in families who lose their homes to foreclosure, is an increased probability of being forced to move.⁴⁰ In addition to the other familial stressors, these moves were most often to "lower-performing and lower quality schools."⁴¹ Sometimes, these forced moves also resulted in having to "double up" with another family, thus involuntarily changing the household composition of two or more families.⁴²

Aside from the impact on family well-being, families facing foreclosure were more likely than non-foreclosed families to "access the public safety net through noncash transfer programs," and had little additional cash to put towards saving their homes.⁴³ Families given a notice of default were more likely to experience "food insecurity."⁴⁴ At the same time, these families were less likely to have financial support offered by families and friends to assist with housing costs.⁴⁵

On the state level, mass foreclosures have tremendous impacts. Mass foreclosures depress sales and property values of both foreclosed homes and surrounding properties impacting the tax base.⁴⁶ The damage to foreclosure victims' credit scores limits their spending and investment potential.⁴⁷ Court dockets burst at the seams with foreclosure suits, overwhelming the system and bottlenecking the foreclosure process with stalls and delays.⁴⁸ When the number of foreclosures rise, taxpayer and property tax revenue disappears, while the number of people who qualify for social benefits provided by the state exponentially increases.⁴⁹ "The

35. Laryssa Mykyta, *Housing Crisis and Family Well-being: Examining the Effects of Foreclosure on Families* 15 (SEHSD Working Paper #2015-07, 2015).

36. *Id.* at 12.

37. *Id.* at 9.

38. *Id.* at 2.

39. *Id.* at 3.

40. *Id.* at 4.

41. Mykyta, *supra* note 35, at 4.

42. *Id.* at 4.

43. *Id.* at 17.

44. *Id.*

45. *Id.*

46. Elizabeth Weintraub, *How Foreclosure Sales Affect Home Values*, THE BALANCE, <https://www.thebalancemoney.com/foreclosure-sales-affect-home-values-1798174#> (Jan. 31, 2022).

47. Andrea Wimmer, *How Will Foreclosure Affect My Credit?*, UPSOLVE, <https://upsolve.org/learn/foreclosure-affect-credit/#:~:> (Nov. 6, 2021).

48. *See Just the Facts: A Look Back at the Role of Federal Courts in the Foreclosure Crisis*, U.S. CTS. (Oct. 24, 2019), <https://www.uscourts.gov/news/2019/10/24/just-facts-look-back-role-federal-courts-foreclosure-crisis>.

49. *See* Weintraub, *supra* note 46.

cumulative costs of even a single foreclosure sale may far exceed the entire amount of a typical \$200,000 mortgage loan.”⁵⁰ Homeowners’ net worth is, on average, 80 times that of renters, but only if they can hold on to their homes.⁵¹ When the whole cost to the state is considered, it becomes apparent that it is in the best interest of states to fund programs that empower families to fight foreclosure.

B. Empirical Evidence Proves the Effectiveness of Foreclosure Mediation Programs

Joint research conducted by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice on the nationwide impact of the collapse of the housing market in the early 2000s “uniformly supports the effectiveness of foreclosure mediation in achieving loan modifications and other resolutions that avoid the need for foreclosure sales.”⁵² Furthermore, “opt-out” programs have higher rates of participation than programs where homeowners must request mediation or actively “opt-in.”⁵³ As a whole, adoption of foreclosure sale prevention, saves money, as “the net present value of a successful modification will almost invariably exceed the modest cost of mediation.”⁵⁴

C. Opposition to Foreclosure Mediation Programs Is Profit-Centered

“Stakeholder involvement is a major factor in the success of mediation programs.”⁵⁵ Foreclosure mediation programs provide a wide range of social and individual benefits, however, there are other interests actively working against the adoption of legislation establishing and enabling these programs.⁵⁶

The interests of mortgage servicers, who actually conduct foreclosure cases, are not well aligned with the lenders and investors whose economic interests are at stake in the mortgage loan. Servicers benefit economically from loan defaults and foreclosures even if their principals do not. In particular, mortgage servicer compensation structures incentivize servicers not to negotiate loan modifications that are net present value positive for the mortgage investor. Servicers make the most money when they either collect on-time payments or foreclose and sell homes quickly the staffing

50. White, *supra* note 4, at 428.

51. Jonathan Eggleston & Donald Hays, *Many U.S. Households Do Not Have Biggest Contributors to Wealth: Home Equity and Retirement Accounts*, U.S. CENSUS BUREAU (Aug. 27, 2019), <https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html>.

52. In 2011 Connecticut’s program reported 70% of homeowners facing foreclosure showed up to automatically scheduled meetings; 64% of this group stayed in their homes and 15% “negotiated a ‘graceful exit’ such as a short sale.” New York’s 2011 data indicates “90% of eligible homeowners participate in mediation.” White, *supra* note 4, at 419.

53. *Id.* at 421.

54. *Id.* at 428.

55. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & DEPARTMENT OF JUSTICE, *supra* note 7, at 4.

56. *See* White, *supra* note 4, at 428–29.

and training required to implement good loan modifications and other workouts are unprofitable for servicers.⁵⁷

In Nevada, the Nevada Mortgage Mediation Program has had an additional impact: lender accountability.⁵⁸ The Nevada Supreme Court in *Pasillas v. HSBC Bank USA*, held that sanctions against a servicer were warranted when the servicer “failed to have a person with authority to modify the mortgage available, and failed to produce required documents including the mortgage note and an appraisal of the home.”⁵⁹ The court found this failure to come to foreclosure mediation with the information and authority to assist, constituted bad faith and misconduct.⁶⁰ While various jurisdictions have different versions of accountability measures, the presence of these measures helps ensure all parties’ good faith participation in mediations.⁶¹

The success of foreclosure mediation programs in Nevada, Massachusetts, and beyond, lies in the slowing of the foreclosure process to encourage lenders to “fully evaluate loan modification, short sales, and other alternatives before proceeding to foreclosure” and “compel[ing] the servicer to . . . identify all available loss mitigation programs; decide whether the homeowner is eligible for any of them and justify its decision.”⁶²

III. CONCLUSION

“If foreclosure mediation is even modestly successful in preventing foreclosure sales, the benefits should easily outweigh the costs.”⁶³ The seemingly counterintuitive move by members of the Nevada Assembly to attempt to end their state’s program to eliminate a seemingly nominal cost, appears to not consider the full economic devastation foreclosure brings to both individual families and state interests. Massachusetts’s legislature appears to continue attempting to establish such a program because of these same considerations, and despite the cost of investing in the creation of a state Foreclosure Mediation Program. Though the Massachusetts legislature’s repeated attempts to create a program in their state have not yet succeeded, their concerted efforts demonstrate a commitment to reducing social and societal costs associated with foreclosure.

While the Nevada Assembly’s proposal to once again end the State’s Foreclosure Mediation Program failed this year, the risk remains that these programs could be repealed in any state at any time if states fail to take into their cost-benefit analysis the whole cost of foreclosure when deciding whether these programs are worth the investment. Despite Massachusetts’ foreclosure rate being half of Nevada’s, the Massachusetts legislature’s progression towards creating a program demonstrates their belief that both a pre-foreclosure mediation program and a foreclosure mediation program are important to the well-being of the state and its citizens.

57. *Id.* at 438.

58. *See Pasillas v. HSBC Bank USA*, 255 P.3d 1281 (Nev. 2011).

59. White, *supra* note 4, at 446.

60. *Id.*

61. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & DEPARTMENT OF JUSTICE, *supra* note 7, at 7.

62. White, *supra* note 4, at 438–39.

63. *Id.* at 428–29.

To be clear, the Nevada Assembly's questioning of their program is not wrong. However, it is short-sighted. Nevada is not alone. Despite the empirically demonstrated success of foreclosure mediation's cost-savings and social benefits, half of the states still have no formal programs aimed at bringing lenders, servicers, and homeowners facing the loss of their homes, to the table to forge agreements to avoid foreclosure. It is not wrong to question and evaluate whether these programs are achieving a net benefit. However, in questioning the cost of foreclosure beyond the sticker price of mitigation and failing to make decisions based on empirical evidence of program success, residents of any state where these programs can be repealed or discontinued could find themselves that much closer to losing more than just their homes when times get tough.

THE INTERSTATE TEACHER MOBILITY COMPACT: THE STATES' ANSWER
TO THE NATIONAL TEACHER SHORTAGE[†]

Bill Number:	Alabama Senate Bill 46
Bill Status:	Enacted on May 16, 2023. ⁶⁴
Bill Number:	Colorado House Bill 23-1064
Bill Status:	Enacted on March 10, 2023. ⁶⁵
Bill Number:	Florida Senate Bill 1446
Bill Status:	Enacted on May 2, 2023. ⁶⁶
Bill Number:	Kansas Senate Bill 66
Bill Status:	Enacted on April 24, 2023. ⁶⁷
Bill Number:	Kentucky House Bill 319
Bill Status:	Enacted on March 31, 2021. ⁶⁸
Bill Number:	Nebraska Legislature Bill 298
Bill Status:	Enacted on June 1, 2023. ⁶⁹
Bill Number:	Nevada Senate Bill 442
Bill Status:	Enacted on May 31, 2023. ⁷⁰
Bill Number:	Oklahoma Senate Bill 467
Bill Status:	Enacted on May 2, 2023. ⁷¹
Bill Number:	Oregon Senate Bill 279

64. S.B. 46, 2023 Leg., Reg. Sess. (Ala. 2023).

65. H.B. 1064, 74th Gen. Assemb., Reg. Sess. (Colo. 2023).

66. S.B. 1446, 2023 Leg., Reg. Sess. (Fla. 2023).

67. S.B. 66, 2023 Leg., Reg. Sess. (Kan. 2023).

68. H.B. 319, 2023 Gen. Assemb., Reg. Sess. (Ky. 2023).

69. Leg. B. 298, 108th Leg., 1st Sess. (Neb. 2023).

70. S.B. 442, 82d Leg., Reg. Sess. (Nev. 2023).

71. S.B. 467, 59th Leg., Reg. Sess. (Okla. 2023).

No. 1] *Legislative Update* 185

- Bill Status:** Enacted on June 27, 2023.⁷²
- Bill Number:** Utah Senate Bill 35
Bill Status: Enacted on March 14, 2023.⁷³
- Bill Number:** California Senate Bill 811
Bill Status: Referred to the Committee on Education on June 15, 2023.⁷⁴
- Bill Number:** Delaware Senate Bill 188
Bill Status: Reported out of Committee on Education on June 27, 2023.⁷⁵
- Bill Number:** New Jersey Assembly Bill 5298
Bill Status: Introduced on March 16, 2023.⁷⁶
- Bill Number:** New York Senate Bill 7222
Bill Status: Introduced on May 18, 2023.⁷⁷
- Bill Number:** Ohio Senate Bill 27
Bill Status: Referred to the Committee on Education on February 8, 2023.⁷⁸
- Bill Number:** Pennsylvania Senate Bill 843
Bill Status: Introduced on June 26, 2023.⁷⁹

Summary (all): Creates statutory authority for interstate teacher certification and licensing reciprocity. This legislation requires the Interstate Teacher Mobility Compact Commission to create a rule providing for binding and non-binding dispute resolution methods to resolve disputes between Member States, or between Member and Non-Member States.

I. INTRODUCTION

Parents, school districts, and the public at large face growing concern over the so-called “national teacher shortage.”⁸⁰ Although researchers first noticed the shortage around 2017, the COVID-19 pandemic intensified the problem and brought the issue squarely into the public focus.⁸¹ The national teacher shortage

72. S.B. 279, 82d Or. Leg. Assemb., Reg. Sess. (Or. 2023).

73. S.B. 35, 2023 Gen. Sess. (Utah 2023).

74. S.B. 811, 2023 Leg., Reg. Sess. (Cal. 2023).

75. S.B. 188, 152d Gen. Assemb., Reg. Sess. (Del. 2023).

76. Assemb. B. 5298, 220th Leg., Reg. Sess. (N.J. 2023).

77. S.B. 7222, 2023 Leg., Reg. Sess. (N.Y. 2023).

78. S.B. 27, 135th Gen. Assemb., Reg. Sess. (Ohio 2023).

79. S.B. 843, 2023 Gen. Assemb., Reg. Sess. (Pa. 2023).

80. John Schmitt & Katherine deCourcy, *The pandemic has exacerbated a long-standing national shortage of teachers*, ECON. POL’Y INST. (Dec. 6, 2022), <https://www.epi.org/publication/shortage-of-teachers/>.

81. *See id.*

has affected nearly half of all public schools, but is substantially more pronounced in school districts with higher percentages of students from minority backgrounds and families with a lower socioeconomic status.⁸² Special education and mathematics departments tend to present with the highest vacancy rates among all other content areas.⁸³ Poor compensation and high levels of stress associated with the profession, specifically stress related to the COVID-19 pandemic, are frequently cited as reasons for this shortage.⁸⁴ In addition, inadequate public funding, decreased morale, and a lack of available substitute teachers are actively contributing to the shortage.⁸⁵ The Interstate Teacher Mobility Compact (“ITMC”) is a national effort to “reduce the red tape” associated with allowing teachers to obtain teaching licenses in another state.⁸⁶ Typically to obtain a teaching license in another state, the process involves teachers passing additional courses or exams and paying for a new license.⁸⁷ One major benefit of the ITMC is the impact it will have on the teacher shortage.⁸⁸

II. BACKGROUND OF THE INTERSTATE TEACHER MOBILITY COMPACT

In September 2020, the Department of Defense (“DOD”) and the Council of State Governments (“CSG”) joined forces to create several new occupational licensing interstate compacts.⁸⁹ In March 2021, the DOD and CSG partnered with the National Association of State Directors of Teacher Education and Certification (“NASDTEC”) to develop an interstate compact for K-12 teacher licensing and certification.⁹⁰ These groups sought insight and advice from many interested stakeholders in drafting the ITMC, including licensed teachers, state education department officials, and legislators.⁹¹ Following an intense review process in the summer of 2022, a final draft of the ITMC came to fruition, and states began introducing the proposed legislation shortly thereafter.⁹²

The ITMC accomplishes its goal of reducing red tape in teacher mobility by granting teachers with eligible licenses reciprocity in member states.⁹³ In the teacher licensing and certification context, reciprocity refers specifically to gaining

82. *See id.*

83. *Id.*

84. *Id.*

85. Thomas B. Edsall, *There’s a Reason There Aren’t Enough Teachers in America. Many Reasons, Actually.*, N.Y. TIMES (Dec. 14, 2022), <https://www.nytimes.com/2022/12/14/opinion/teacher-shortage-education.html>.

86. Madeline Will, *The Interstate Teacher Mobility Compact Is Now in Effect. Here’s What That Means*, EDUCATIONWEEK (July 10, 2023), <https://www.edweek.org/teaching-learning/the-interstate-teacher-mobility-compact-is-now-in-effect-heres-what-that-means/2023/07>.

87. *Id.*

88. *Id.*

89. *Interstate Teacher Mobility Compact*, TCHR. COMPACT, <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-Development-Process.pdf> (last visited Dec. 18, 2023).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

certification in another state without having to meet every requirement a teacher initially licensed in the receiving state would have to meet.⁹⁴

In addition to reducing the red tape most teachers face when moving to a new state, the ITMC is, in part, an effort by the DOD to reduce stress and cost to military spouses who are members of the teaching profession.⁹⁵ Military families often are required to relocate every few years, which “can present significant cost and time barriers” for military spouses in the teaching profession by requiring them to obtain a license in each new state they relocate to.⁹⁶ The ITMC diminishes such cost and time barriers for military families in an already difficult and stressful transition period.⁹⁷

For an individual teacher’s license to be eligible for reciprocity under the ITMC, it must meet certain requirements.⁹⁸ First, the license must have required the teacher to obtain a “bachelor’s degree and completion of a state-approved program for teacher licensure.”⁹⁹ Second, the license must be unencumbered, which means the license is “not restricted, probationary, provisional, substitute or temporary.”¹⁰⁰ Finally, the teacher must participate in “the receiving state’s background check process.”¹⁰¹ The primary benefit of the ITMC over other existing teacher license reciprocity programs is the uniformity of rules and expectations for member states.¹⁰² The ITMC is governed by the Interstate Teacher Mobility Compact Commission (the “Commission”), which “is made up of one commissioner from each member state.”¹⁰³ The commissioner from each state “is the principal administrative officer of the state licensing authority [...] or their designee.”¹⁰⁴

As of the date of this publication, the ITMC has been enacted in the following ten states: Alabama, Colorado, Florida, Kansas, Kentucky, Nebraska, Nevada, Oklahoma, Oregon, and Utah.¹⁰⁵ Legislation is pending in six states, and more are expected to join in the coming years.¹⁰⁶

III. THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION

The ITMC legislation passed in each state is uniform, meaning they are all substantially the same. This paper will cite to the Colorado Interstate Teacher Mobility Compact as the primary example of this legislation. The statute begins with

94. *Teacher Certification Reciprocity & How It Works*, ALL EDUC. SCHS., <https://www.alleducationschools.com/teaching-careers/teacher-certification-reciprocity/> (last visited Dec. 18, 2023).

95. Will, *supra* note 86.

96. *Id.*

97. *Id.*

98. *Interstate Teacher Mobility Compact (ITMC) Frequently Asked Questions*, TCHR. COMPACT, <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-FAQs.pdf> (last visited Dec. 18, 2023) [hereinafter *ITMC Frequently Asked Questions*].

99. An example of a state-approved program for licensure is “a teacher preparation program at a college or university.” A bachelor’s degree is generally not required to hold a Career and Technical Education Teaching license, so these licenses are eligible for reciprocity without that requirement. *Id.*

100. This requirement is loosened for military spouses in that they may be eligible for reciprocity with a temporary or provisional license. *Id.*

101. *Id.*

102. Will, *supra* note 86.

103. *ITMC Frequently Asked Questions*, *supra* note 98.

104. *Id.*

105. *Compact Map*, TCHR. COMPACT (2023), <https://teachercompact.org/compact-map/>.

106. *See id.*

a recitation of the ITMC's purpose, followed by detailed qualifications for obtaining an eligible teaching license under the ITMC.¹⁰⁷ The bulk of the legislation deals with the roles and responsibilities of the Commission, which includes creating a rule providing for both binding and non-binding dispute resolution methods for disputes arising under the ITMC.¹⁰⁸

A. Duties of the Commission

The Commission is largely self-governing, as it is required to establish its own code of ethics, determine its own fiscal year period, and provide its own bylaws.¹⁰⁹ Rules promulgated by the Commission pursuant to its authority under the ITMC "have the force and effect of law and shall be binding in all Member States."¹¹⁰ The Commission has the authority to "[d]etermine whether a State's adopted language is materially different from the model compact language such that the State would not qualify for participation in the Compact."¹¹¹

In addition, the Commission as a whole has a duty to "[e]stablish and elect an Executive Committee," which has even greater authority to oversee the actions of Member States and report to the Commission regarding Member States' compliance with the Commission's rules.¹¹² The Executive Committee is composed of "[t]he Commission chair, vice chair, and treasurer," as well as five elected members from the current membership of the Commission.¹¹³ The Commission enjoys a high degree of influence over implementation and oversight of the ITMC, as evidenced by the thoroughness of their roles and obligations outlined in Colorado's ITMC.¹¹⁴

B. Handling Conflicts Under the Interstate Teacher Mobility Compact

In addition to its other duties and responsibilities under the ITMC, the Commission is required to "promulgate a Rule providing for both binding and non-binding alternative dispute resolution for disputes as appropriate."¹¹⁵ The Commission is required to "attempt to resolve disputes" that arise under the ITMC between Member States, or between Member and Non-Member States.¹¹⁶ The ITMC does not specify how or why such disputes may arise, but one example that can be inferred from the language of the ITMC is a dispute arising from the Commission's rejection of a newly joined Member State on the grounds that the language of their legislation is not substantially the same as the model legislation. The possibility of addressing such a dispute with alternative dispute resolution as opposed to

107. See, e.g., H.B. 1064, 74th Gen. Assemb., Reg. Sess. (Colo. 2023).

108. See, e.g., *id.*

109. See, e.g., *id.*

110. See, e.g., *id.* ("Member State" – means any State that has adopted this Compact, including all agencies and officials of such State.')

111. This further illustrates the degree of power vested in the Commission, as they have the ultimate authority to decide whether a newly joined Member State is allowed to join and benefit from the ITMC. See, e.g., *id.*

112. See, e.g., *id.*

113. See, e.g., Colo. H.B. 1064 ("Four voting members representing geographic regions in accordance with Commission Rules[,] and [o]ne at large voting member in accordance with Commission Rules.')

114. See, e.g., *id.*

115. See, e.g., *id.*

116. See, e.g., *id.*

traditional litigation allows the ITMC to continue affecting change in the teaching industry without substantial interruption by the judicial process. It is no secret that litigation is time-consuming, expensive, and very public. Providing an alternative dispute resolution process for disputes under the ITMC reduces the odds of negative publicity directed at the ITMC as a result of such potential litigation. This would help promote the dual purposes of the ITMC: to reduce the national teacher shortage and assist military families by easing their transition to new states when they are required to relocate.

IV. CONCLUSION

The national teacher shortage is far from being fully remedied, but the ITMC is surely a step in the right direction.¹¹⁷ For states with many rural communities, like Kansas, the ITMC offers tangible solutions for addressing the teacher shortage, because of the increased speed and ease of “the application process for relocating licensees.”¹¹⁸ This will help reduce the burden associated with relocating to such a rural area, and will encourage more teachers who are on the fence about making the move to do so.¹¹⁹

Although the ITMC looks promising for remedying the national teacher shortage, it has been met with some skepticism and pushback from educators and school administrators.¹²⁰ For example, the superintendent of Eagle County School District in Colorado lamented that he believes poor compensation is the primary driving force preventing teachers and staff from filling vacancies in his district, which is situated in the wealthy ski town of Vail, Colorado.¹²¹ Housing costs in the region are astronomical, and according to the Keystone Policy Center, “only about 20% of available homes in Colorado are affordable to teachers” based on the state’s average teacher salary.¹²² While noting that poor compensation is likely a “principle cause of teacher shortages” in Colorado, the president of the Colorado Education Association noted that decreasing the barriers associated with obtaining a teaching license in Colorado will help attract more teachers to the state.¹²³

The teaching profession is undergoing a major transformation as of late, and the ITMC has the potential to make changes that prior to its enactment seemed impossible. Virtual schooling became commonplace during the COVID-19 pandemic, and although much of the country has returned to in-person schooling, online education seems to be here for the long haul. With the new possibility of licensure reciprocity in ten (and counting) states, educators can now make a life-long career

117. See Jen Loescher, *Compact mitigates obstacles to teacher mobility*, NEV. INDEP. (June 21, 2023, 2:00 AM), <https://thenevadaindependent.com/article/compact-mitigates-obstacles-to-teacher-mobility>.

118. See Rafael Garcia, *Out-of-state teachers set to have easier path to licensure in Kansas*, TOPEKA CAP.-J. (Apr. 22, 2023, 6:01 AM), <https://www.cjonline.com/story/news/education/2023/04/22/kansas-joins-interstate-teacher-mobility-license-compact/70136622007/>.

119. See *id.*

120. See Jesse Bedayn, *Colorado, 9 other states mull cross-border licensure rules to tackle teacher shortage*, COLO. SUN (Feb. 3, 2023, 5:07 PM), <https://coloradosun.com/2023/02/03/interstate-teacher-compact-bill-colorado/>.

121. *Id.*

122. *Id.*

123. *Id.*

out of teaching for a fully online school servicing students across the country.¹²⁴ This is not a novel idea. Nearly 16% of nurses certified under a similar occupational licensure interstate compact use their multi-state certification to practice telehealth—another industry that boomed as a result of the COVID-19 pandemic.¹²⁵ The potential benefits of the ITMC extend far beyond helping military spouses transition to a new state and aiding in addressing the national teacher shortage.

Despite some minor pushback from school officials in Colorado, the ITMC is breaking down barriers for teachers seeking to relocate to another state, no matter their reason for doing so. The ITMC was the fastest of all existing occupational interstate licensure compacts to become active.¹²⁶ The speed with which the ITMC became active reflects the urgency of educators and policymakers in addressing the national teacher shortage. The hope is that more states in the coming years will enact the ITMC, which will enable even greater mobility among teachers seeking to relocate to other states. It's vital to the success of the ITMC that supporting its purpose remains the primary focus of the Commission. Allowing disputes arising under the ITMC to proceed in alternative dispute resolution will help support keeping its purpose as the primary focus by freeing up commissioners from involvement in prolonged and expensive litigation.

VICTIM-OFFENDER MEDIATION: CHANGING THE SYSTEM BY WHICH CRIMES ARE DEFINED AND RESOLVED*

Bill Number:	Montana House Bill 500
Bill Status:	Enacted on May 19, 2023. ¹²⁷
Bill Number:	Nebraska Legislative Bill 507
Bill Status:	Notice of hearing for February 15, 2023. ¹²⁸
Bill Number:	North Carolina Senate Bill 437 / House Bill 596
Bill Status:	Referred to the Senate Committee on Senate Rules and Operations on March 30, 2023. ¹²⁹
Bill Number:	Oklahoma House Bill 2345 / House Bill 2225 / House Bill 2371 / Senate Bill 122 / Senate Bill 856 / Senate Bill 499
Bill Status:	Referred to the House Judiciary Criminal Committee on February 2, 2023. ¹³⁰
Bill Number:	Texas Senate Bill 1401

124. See Teresa Lundgren, *Teachers Without State Borders: The Importance of License Reciprocity*, EXCELINED (May 12, 2023), <https://excelined.org/2023/05/12/teachers-without-state-borders-the-importance-of-license-reciprocity/>.

125. *Id.*

126. Will, *supra* note 86.

127. H.B. 500, 68th Leg., Reg. Sess. (Mont. 2023).

128. Leg. B. 507, 108th Leg., 1st Sess. (Neb. 2023).

129. S.B. 437, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023).

130. H.B. 2345, 59th Leg., 1st Sess. (Okla. 2023).

No. 1] *Legislative Update* 191

- Bill Status:** Enacted on May 24, 2023.¹³¹
- Bill Number:** Texas Senate Bill 2101/ House Bill 4518
Bill Status: Enacted and effective on September 1, 2023.¹³²
- Bill Number:** Texas House Bill 2668
Bill Status: Referred to Juvenile Justice & Family Issues on March 13, 2023¹³³
- Bill Number:** Utah House Bill 304
Bill Status: Enacted on March 14, 2023.¹³⁴

I. INTRODUCTION

Mediation is a form of alternative dispute resolution often associated with resolving civil disputes, particularly with a strong emphasis on reaching a settlement agreement. However, mediation is increasingly being utilized in the criminal justice system.¹³⁵ A particular use of meditation in criminal justice is through restorative justice, specifically, victim-offender mediation programs.¹³⁶ Victim-offender mediation is a form of mediation where an offender of a crime and the victim of that crime, meet to discuss the offense, restitution, other related sanctions, and related discussions.¹³⁷ Victim-offender mediation derives from the concept of restorative justice, and this concept restructures the focus for which crimes are analyzed. Restorative justice focuses the process on the harmed victim, rather than the offender.¹³⁸ In conjunction with the ideals of reformatory justice, victim-offender mediation has a distinctive procedure and role for the mediator that differs from the many other types of mediation. States across the nation continue to see the potential of restorative justice and are implementing victim-offender mediation programs in various forms.

II. RESTORATIVE JUSTICE THEORY

The foundation of any victim-offender mediation programs is the restorative justice theory.¹³⁹ Presently, retributive justice theory underlies most of society's procedures and perspective on crime and victimization.¹⁴⁰ The origins of retributive justice, which underpin numerous Western legal systems, can be traced back to the

131. S.B. 1401, 88th Leg., Reg. Sess. (Tex. 2023).

132. S.B. 2101, 88th Leg., Reg. Sess. (Tex. 2023).

133. H.B. 2688, 88th Leg., Reg. Sess. (Tex. 2023).

134. H.B. 304, 2023 Gen. Sess. (Utah 2023).

135. Marty Price, *Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders?*, ONLINE J. PEACE & CONFLICT RESOL. (May 1998), https://www.trinsti-tute.org/ojpcr/1_2price1.htm.

136. *Id.*

137. *Id.*

138. Alexa Sardina & Alissa R. Ackerman, *Restorative Justice in Cases of Sexual Harm*, 25 CUNY L. Rev. 1, 25 (2022).

139. Price, *supra* note 135.

140. Stephanie A. Beauregard, *Court-Connected Juvenile Victim-Offender Mediation: An Appealing Alternative for Ohio's Juvenile Delinquents*, 13 OHIO ST. J. ON DISP. RESOL. 1005, 1009 (1998).

12th century.¹⁴¹ Specifically, during the Norman invasion of Britain, the focus of crime changed from being a victim-offender conflict to a violation of the King's peace.¹⁴² The legal process was a tool William the Conqueror used to establish his sovereignty.¹⁴³ Under William the Conqueror's rule, crimes committed were no longer just against individual victims, but rather a breach of the king's peace, thus giving the crown jurisdiction.¹⁴⁴ While the legal process has changed and evolved, the foundation remains the same. Retributive justice theory defines "crime" as; an offense against the state, not the individual.¹⁴⁵ In a criminal prosecution, the victim harmed by the offense merely plays the passive role of a witness, and little to no attention is given to their emotional or material needs.¹⁴⁶ Retributive justice theory defines offender accountability through deterrence and subsequent punishment, implying that such punishment will stop the offender or others from committing the same crime, and that through the punishment itself, the offender will restore society for their crime.¹⁴⁷

Alternatively, restorative justice theory defines crime as the victimization of one person by another.¹⁴⁸ In a system or program based on restorative justice, the responsibility for addressing unlawful conduct does not lie primarily with the state, but rather with the victim, the offender, and the community as a whole.¹⁴⁹ Both victims and offenders are expected to serve active roles in solving and negotiating an agreement that is intended to restore the material and psychological losses of the victim, while also impressing upon the offender the "human impact" of his criminal conduct.¹⁵⁰ Through restorative justice, the offender is not held accountable by punishment per se, but by playing an active role in the restitution process and accepting responsibility for their actions. Each of these concepts of restorative justice is present in the process and procedure of any victim-offender mediation.

III. THE MEDIATION PROCESS

Mediation is a process of assisted negotiation by a neutral person who helps parties reach a resolution.¹⁵¹ The specific mediation process and procedures depend on the style of the mediator, the nature of the dispute, and the wishes of the party.¹⁵² To successfully achieve the objectives of restorative justice, the process of victim-offender mediation must have specific characteristics, some of which would not be seen in a typical settlement mediation.¹⁵³ Victim-offender mediation is primarily a dialogue-driven process with an emphasis on victim healing, offender

141. Mary Ellen Reimund, *Mediation in Criminal Justice: A Restorative Approach*, 46 *ADVOC.* 22 (2003).

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Sardina & Ackerman, *supra* note 138, at 29–30.

147. *Id.* at 29.

148. Beauregard, *supra* note 140, at 1010.

149. *Id.* at 1012.

150. *Id.*

151. DWIGHT GOLANN & JAY FOLBERG, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL* 69 (Rachel E. Barkow et. al. Eds., 4th ed. 2022).

152. *Id.*

153. Reimund, *supra* note 141, at 23.

accountability, and restoration of losses, and follows a humanistic model.¹⁵⁴ A victim-offender mediation may be conducted in the following steps, or something similar: (1) the intake phase; (2) the preparation phase; (3) the mediator meeting with the offender; (4) the mediator meeting with the victim; and (5) the meeting between the victim and the offender.¹⁵⁵

The humanistic model and its philosophy align with the concept of transformative mediation. The pre-mediation meetings are an essential part of the humanist model because they allow the parties to build rapport with the mediator and feel safe to engage in difficult conversations about the conflict.¹⁵⁶ Mediation in other areas of law is often court-ordered. However, victim-offender mediations are victim driven; and therefore, should always be completely voluntary. If the victim were forced to participate in mediation with the offender, it could result in a traumatic re-victimization.

In mediation driven towards a settlement, mediators often act in an active, participating, and evaluative role in the discussion.¹⁵⁷ However, a mediator in a victim-offender mediation cannot participate in such an active role.¹⁵⁸ The mediator in victim-offender mediation takes a passive role in the process, offering clear leadership during the process while simultaneously getting out of the way.¹⁵⁹ The need for the mediator to provide leadership through the process may vary depending on the particular type of conflict.¹⁶⁰ For example, in juvenile victim-offender mediation, a young offender may lack the requested knowledge to clearly communicate their positions or advocate for themselves.¹⁶¹ Here, a mediator must be able to recognize when a party is struggling with any of the essential steps of the process.¹⁶² Although, when it comes to the actual substance and conversations of the mediation, the mediator should not participate, and should remain silent, only interjecting when it is clear the parties are stuck or need assistance.¹⁶³ To assist the mediator in his passive role, the mediator may pull his chair back from the table and/or look down so that the parties can focus on each other and not the mediator.¹⁶⁴ Overall, the goal of a mediator in a victim-offender mediation, is to guide the procedure and let the parties do guide the substantive discussion.

IV. GLOBAL PROGRESS

The use of restorative justice and victim-offender mediation in criminal justice systems has increased dramatically over the years. Particularly, the individual criminal charges for which jurisdictions offer victim-offender mediation continues to

154. *Id.*

155. The Victim – Offender Meeting usually consists of the following process of: (1) An introductory opening statement by Mediation; (2) storytelling by each party; (3) clarification of facts and feelings; (4) reviewing victim losses and options for compensation; (5) developing a written restitution agreement; (6) and closing statements by the mediator. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Beauregard, *supra* note 140, at 1020.

160. *Id.*

161. *Id.* at 1019.

162. *Id.* at 1020–21.

163. Reimund, *supra* note 141, at 23.

164. *Id.*

increase.¹⁶⁵ What once began in the juvenile justice systems of North America, restorative justice policy, has since found its way into virtually all levels of adult and juvenile justice systems, including the handling of violent crimes.¹⁶⁶

Nationally, there are individual restorative justice programs in virtually every state.¹⁶⁷ Since November 2022, at least six states have enacted or are seeking to enact statutes that alter, expand, or establish victim-offender mediation opportunities in their retrospective legislative sessions. Many states and municipalities have well-established systems that are widely used. For example, Orange County, California, has a victim-offender mediation and conferencing program that receives up to a thousand referrals of juvenile offenders and their victims annually.¹⁶⁸ The increase in the use of restorative justice programs has also increased internationally. Restorative justice programs and policies are being developed in Australia, Canada, most European countries, Japan, China, Liberia, New Zealand, South Africa, many South American countries, South Korea, Russia, and Ukraine.¹⁶⁹

Conflicts in which restorative justice and victim-offender mediation have been offered to resolve continue to expand.¹⁷⁰ Some of these conflicts include sex crimes, juvenile crimes, and even human rights violations.¹⁷¹

V. RECENT LEGISLATIVE MOVEMENT IN THE U.S.

In the most recent state legislative sessions, many states have put forth and enacted bills that include victim-offender mediation provisions. For example, the Utah State Legislature passed House Bill 304 on March 13, 2023, and the Governor signed the bill the following day.¹⁷² Utah's House Bill 304 amends various state codes, including 63M-7-208 (Juvenile justice oversight -- Delegation -- Effective dates) and 80-6-304 (Nonjudicial adjustments).¹⁷³ The amended 63M-7-208 allows the State Commission on Criminal and Juvenile Justice to review "costs averted from reductions in out-of-home placements for juvenile justice youth placed with the Division of Juvenile Justice Services and the Division of Child and Family Services, and make recommendations to prioritize the reinvestment and realignment of resources into community-based programs for youth living at home."¹⁷⁴ The bill lists specific state-funded programs that they recommend be expanded, which includes victim-offender mediation.¹⁷⁵ The amended 80-6-304 outlines things that a juvenile probation officer may require a minor on probation to do.¹⁷⁶ Victim-offender mediation is included in the list of things the bill states a probation officer

165. Mark S. Umbreit & Marilyn Peterson Armour, *Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community*, 36 WASH. U. J.L. & POL'Y 65 (2011).

166. *Id.*

167. *Id.* at 67.

168. *Id.* at 70.

169. *Id.* at 69.

170. *Id.*

171. Umbreit & Peterson Armour, *supra* note 165, at 73.

172. Juvenile Justice Revisions, H.B. 304, 2023 Gen. Sess. (Utah 2023).

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

may require a minor on probation to do but stipulates that this may only be required where the victim-offender mediation has been requested by the victim.¹⁷⁷

As mentioned above Utah is just one of six states that have passed or are in the process of passing bills expanding the opportunity for victim-offender mediation. Utah's House Bill 304 illustrates how states are willing to direct funds to expand access to victim-offender mediation and restorative justice programs, while additionally establishing thorough procedures in which the program can be used and required within the state's criminal justice system.

VI. EFFECTIVENESS OF VICTIM-OFFENDER MEDIATION

Given the growing use of victim-offender mediation and restorative justice programs, questions regarding victim-offender mediation's effectiveness are often raised. However, studying the effectiveness of restorative justice can prove to be a challenging task, due to its lack of standardization, every case, program, etc. looks a little different.¹⁷⁸ Although it is this very lack of standardization that some argue makes restorative justice programs more effective.¹⁷⁹ The reason no process or program looks identical is that the needs of various crimes and individual victims and conflicts are not identical.¹⁸⁰

Studies on victim satisfaction and restorative justice show that individuals who have engaged in a restorative justice conference or victim-offender mediation were more satisfied than those who experienced a criminal legal process only.¹⁸¹ Furthermore, these studies show that crime survivors who have to participate in restorative processes may be more prepared to deal with the impacts of trauma.¹⁸² Specifically, individuals who experience harm and engage in restorative processes experience decreases in symptoms of post-traumatic stress.¹⁸³

The idea that a face-to-face conversation between a victim and offender of a traumatic crime can ever be effective or beneficial for the victim is often perplexing and takes a further look into trauma itself. Again, the delicate nature of trauma is one of the primary reasons that victim-offender mediation must be voluntary.¹⁸⁴ Trauma can significantly impact how survivors connect with others and the world around them, it further can disorient their relationship with themselves and their own bodies.¹⁸⁵ People who experience trauma often need to share their stories in their own way, something traditional criminal justice systems do not allow.¹⁸⁶ A person's ability to reconnect with and tell their story can also help a person reconnect with their bodies and with other people.¹⁸⁷ If someone experiences trauma and does not or cannot take the steps necessary to heal from that trauma, it can overtake their body and their brain.¹⁸⁸ By centering the process around the victim rather than

177. *Id.*

178. Sardina & Ackerman, *supra* note 138, at 30.

179. *Id.*

180. *Id.*

181. *Id.* at 32.

182. *Id.*

183. *Id.*

184. Reimund, *supra* note 141, at 23; Beauregard, *supra* note 140, at 1007.

185. Sardina & Ackerman, *supra* note 138, at 33.

186. *Id.* at 33–34.

187. *Id.* at 34.

188. *Id.* at 36.

the state, victim-offender mediation and restorative justice allow the victim the opportunity to take effective steps toward true healing.¹⁸⁹

VII. CHALLENGES OF VICTIM-OFFENDER MEDIATION

Due to the very nature of criminal law and the constitutional rights associated with it, there are some issues when using mediation in the criminal context that are not present in the civil context.¹⁹⁰ While confidentiality is stressed in the mediation process, the areas in which that right derives in a criminal application are unclear.¹⁹¹ The U.S. Constitution guarantees due process and the right against self-incrimination among other rights to criminal defendants. Balancing these rights with mediation, where the offender is often expected to admit to the things they've done, can be difficult.¹⁹² The best way to counter these challenges is to ensure that there is clear voluntariness in participation, legal counsel available, a joint understanding of confidentiality, and that the mediation option occurs at a logical time during their proceedings.¹⁹³ A criminal defendant's vulnerability to the issues created by the intersection of restorative justice policies in our current criminal justice system is at its greatest during pre-trial mediations, where there has been no admission to guilt.¹⁹⁴

VIII. CONCLUSION

In various areas of criminal law, victim-offender mediation and the larger concept of restorative justice are increasingly being adopted by states, nations, and municipalities alike to address the issues that the predominant justice system, grounded in retributive theory, ignores. Through this effort, many offenders can face their offenses head-on and be part of a real solution. Furthermore, through these restorative justice policies, victims can directly address their personal harm and begin rehabilitation in a criminal justice system that has historically seen them as a witness to a crime, not as an individual who was harmed and needs healing.

Due to its lack of standardization, statistical effectiveness is hard to prove. However, the satisfaction of those who participate in victim-offender mediation remains high. State legislative bodies are continuing to propose and enact victim-offender mediation programs, making clear the potential they see in these programs. Adding restorative justice aspects to our criminal legal systems adds more opportunity for resolution in our societies, but it requires that society slightly alter its view of justice itself, and only time will tell if this is too much to ask.

LEVELING THE POWER DYNAMIC BETWEEN LANDLORD-TENANT WITH MEDIATION[#]

Bill Number: Hawaii Senate Bill 393

189. *Id.* at 56.

190. Reimund, *supra* note 141, at 24.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

No. 1]	<i>Legislative Update</i>	197
Bill Status:	Received notice of Senate conferees on 4/18/2023. ¹⁹⁵	
Bill Number:	Vermont House Bill 391	
Bill Status:	Referred to the Committee on General and Housing on 2/23/2023. ¹⁹⁶	
Bill Number:	Oklahoma Senate Bill 687	
Bill Status:	Referred to the Senate Judiciary Committee on 2/7/2023. ¹⁹⁷	

I. INTRODUCTION

The power dynamic between a landlord and tenant is an increasingly discussed topic of conversation in the United States. With the power to render a tenant homeless, landlords often dominate their relationship with tenants. In the context of eviction, the landlord-tenant relationship shifts to intensify the power imbalance.¹⁹⁸ When landlords begin the process of eviction, the relationship between landlord-tenant shifts to one of creditor-debtor.¹⁹⁹

The power imbalance, even through the mere threat of eviction, can deteriorate the relationship between landlord and tenant. The threat of eviction alone makes it less likely for tenants to advocate for rights regarding housing quality.²⁰⁰ Because state laws permit nonpayment of rent to be grounds for eviction, landlords can evade responsibilities and legal obligations by mere threat of eviction.²⁰¹ Landlords essentially hold the comfort and safety of their tenants in the palm of their hands. Tenants could be evicted at will and with little legal protection. This reality leaves tenants displaced at best, and homeless at worst. Tenants are left in fear for their safety, home, and community.²⁰²

Today, these problems are exacerbated. The average tenant spends more than 30% of their income on rent and utilities.²⁰³ With rent so high, many tenants struggle to keep up with the cost of living. The COVID-19 pandemic worsened these problems, leaving many out of work and therefore unable to keep up with rent.²⁰⁴

195. S.B. 393, 32d Leg., Reg. Sess. (Haw. 2023).

196. H.B. 391, 2023 Leg., Gen. Sess. (Vt. 2023).

197. S.B. 687, 59th Leg., Reg. Sess. (Okla. 2023).

198. Phillip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Thread of Eviction*, 18 CITY & CMTY., 638, 639 (2019).

199. *Id.*

200. *Id.* at 640.

201. *Id.* at 638.

202. *Id.* at 640.

203. In some places in the United States, renters pay 40% or more of their income on rent. “For example, in New York, a household with the area’s median income would need to pay nearly 69% of their earnings to rent an average-priced apartment.” Annie Nova, *15 million renters pay more for housing than they can afford. Here’s how to figure out if you’re one of them*, CNBC (Feb. 19, 2023, 9:00 AM), <https://www.cnn.com/2023/02/19/amid-high-housing-costs-how-to-figure-out-what-you-can-spend-on-rent.html>.

204. Mychael Cohen & Eleanor Noble, *Preventing Eviction Filings: Piloting a Pre-Filing Eviction Clinic*, URB. INST. (May 2020), <https://www.urban.org/sites/default/files/publication/102297/preventing-eviction-filings-piloting-a-pre-filing-eviction-prevention-clinic.pdf>.

II. EVICTION: A CRISIS FOR TENANTS

The eviction process varies by state, but many states permit landlords to begin eviction proceedings if a tenant fails to pay rent.²⁰⁵ Sometimes, a tenant has as little as three days to make a payment before a landlord can file for eviction.²⁰⁶ In Missouri, the eviction process is as follows: first, the landlord writes a notice of termination to the tenant.²⁰⁷ Once the tenant receives notice of the eviction, they have an “opportunity to be heard in court” prior to removal from the premises.²⁰⁸ Other states follow a similar process which permits landlords to file a summary possession action or to recover for unpaid rent.²⁰⁹ In Arkansas, failure to pay rent is a crime.²¹⁰ Tenants who undergo a civil action are often drained of resources. Lawsuits are costly and take months or even years. Even if they win the lawsuit, tenants bear the burden of lost time and money from defending themselves in court.

Things are worse for tenants who lose in eviction-related actions. Eviction comes at a high cost. It can have the immediate effect of homelessness, but eviction has more costs than displacement. Eviction can have consequences like interrupted employment, worsened physical and mental health, and negative effects on child health and wellbeing.²¹¹ The negative effects of eviction make it all the more necessary to level the field when a dispute arises. This is why more states are beginning to use mediation before an eviction process may be brought.

III. USE OF MEDIATION IN LANDLORD-TENANT DISPUTES

Mediation is “a process in which an impartial third party[...] helps others resolve a dispute.”²¹² Mediation has been described as having numerous potential benefits. First, mediation provides for a greater degree of control of the parties.²¹³ Mediation permits a more amicable solution as well, as there is no determination of fault and instead a mutual agreement.²¹⁴ This limits the resentment and negative emotions that can come in with litigation which is viewed as a zero-sum game. On that note, mediation can also preserve relationships.²¹⁵ A landlord-tenant relationship is ongoing as the lease continues, and as mentioned above can be tumultuous in certain circumstances. Even if the relationship ends, mediation can make the

205. Ann O’Connell, *State Laws on Termination for Nonpayment of Rent*, NOLO (April 5, 2023), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

206. *Id.*

207. ANDREW BAILEY, MISSOURI’S LANDLORD-TENANT LAW: THE RIGHTS & RESPONSIBILITIES OF LANDLORDS & TENANTS 14 (Jan. 2023), <https://ago.mo.gov/wp-content/uploads/attachments/landlord-tenantlaw.pdf?sfvrsn=414>.

208. *Id.*

209. See ALA. CODE § 35-9A-421(d); CONN. GEN. STAT. §§ 47a-23, 47a-15a; FLA. STAT. § 83.56; IOWA CODE § 562A.27; MICH. COMP. LAWS §§ 554.131, 554.132, 554.133; NEB. REV. STAT. § 76-1431; TEX. PROP. CODE § 24.005.

210. ARK. CODE ANN. § 18-16-101.

211. Dana Goplerud & Craig Pollack, *Prevalence and Impact of Evictions*, OFF. OF POL’Y DEV. & RSCH. (2021), <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight2.html>.

212. Leonard L. Riskin, *Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed*. 1 HARV. NEGOT. L. REV. 7, 8 (1996).

213. *Advantages of Mediation*, U.S. OFF. OF SPECIAL COUNS., <https://osc.gov/Services/Pages/ADR-Advantages.aspx#> (last visited Dec. 18, 2023).

214. *Id.*

215. *Id.*

relationship more amicable.²¹⁶ It also provides for mutually satisfactory results, and the agreements can be more comprehensive and customized to fit the needs of the mediators.²¹⁷ For example, if a landlord wants to evict for nonpayment of rent and a mediation program provided rent relief funds instead of simply demanding the full amount plus interest to be paid, a mediation program could result in a payment plan involving the funds from the program.²¹⁸ Mediation also provides a neutral third party to be a filter for information. Through the power of caucusing, landlords or tenants can speak to the mediator in private, helping the mediator understand their problems and desires.²¹⁹ Further, using the mediator to relay some information can be extremely helpful. When a person hears something from an adversary, even if it is in their best interests, too, they might believe that there is a catch or that the deal is not in their best interest because their adversary recommended it. A mediator can filter the information in a way that appears more neutral. Finally, mediation creates cooperation between the parties, so if there is a problem in the future, they will be less likely to utilize an adversarial approach.²²⁰

Mediation has been viewed as a “particularly effective means of dispute resolution in situations where power imbalances play a role.”²²¹ Since mediation is founded on a respect for human dignity, mediators can “set the tone for how parties can listen to and treat one another.”²²² As an open process, it encourages parties to share their knowledge.²²³ With knowledge comes power, particularly for vulnerable tenants. Mediators can also compensate for the power imbalance that comes with lack of resources. Landlords will often have better negotiating skills, as opposed to tenants who may not understand the process, as Landlords frequently have more funding and have entered numerous leases. “When faced with a party who has minimal negotiating skills the mediator [may] take a more active role in helping that party identify...her concerns and interests.”²²⁴ The mediator can also assist the weaker party in developing options and considering the consequences of each option.²²⁵ Mediation can also ensure that the parties are negotiating in good faith and neither party intimidates the other.²²⁶ The power imbalance in a landlord-tenant relationship cannot be ignored, and mediation is a way to address this imbalance.. With mediation providing so many potential benefits to both landlord and tenant, more state legislators are enacting laws that require landlords to delay filing lawsuits until after attempting mediation on the issue. Hawaii, Vermont, and Oklahoma are three among the states addressing this issue.

216. *Id.*

217. *Id.*

218. See generally Christopher W. Moore, *Caucus: Private Meetings That Promote Settlement*, 16 MEDIATION Q. 87 (1987) (discussing the value of a caucus in leading to creative solutions at mediation).

219. *Id.* at 87–88.

220. U.S. OFFICE OF SPECIAL COUNSEL, *supra* note 213.

221. Albie M. Davis & Richard A. Salem, *Dealing with Power Imbalances in the Mediation of Interpersonal Disputes*, 6 MEDIATION Q. 17, 18 (1984).

222. *Id.* at 19.

223. *Id.* at 19–20.

224. *Id.* at 20.

225. *Id.*

226. *Id.* at 20–21.

Hawaii S.B. 393

Hawaii Senate Bill 393, titled Pre-Litigation Mediation Pilot Program, was introduced on January 20th, 2023, by Hawaii State Senator Donovan M. Dela Cruz.²²⁷ The bill passed its first reading on March 9th, 2023.²²⁸ It was amended a few times and passed its second reading (as amended) later that month.²²⁹ The bill passed its third reading with amendments on April 11th, 2023, and most recently has received notice of senate conferees.²³⁰

The Act requires landlords to engage in mediation before filing an action for summary possession “if a tenant schedules or attempts to schedule a mediation.”²³¹ As long as mediation is scheduled within ten calendar days of the tenant’s receipt of notice by the landlord, the landlord must delay bringing an action.²³² The Act also creates an emergency rent-relief program for participants that will provide resources to help avoid eviction.²³³ Access to these funds and tenants’ knowledge of them during mediation will give tenants support, helping to equalize the existing power imbalance between the landlord and tenant.

Hawaii Senate Bill 393 was created after the legislature found that “many Hawaii residents continue to face the possibility of eviction due to challenges paying rent.”²³⁴ The Hawaii legislature did this after finding that previously enacted Act 57, which facilitated mediation between landlords and tenants to reduce summary possession cases, was widely successful in settling disputes through mediation.²³⁵ Under Act 57, when the landlord provided notice to the tenant that they will file an eviction action, they also provided notice to the mediation center on the island where the tenant resided.²³⁶ “The notice told the tenant to contact that mediation center,” and often, the mediation center would also reach out to the tenant.²³⁷ If a mediation was scheduled within fifteen days, the landlord would have to stay the eviction proceeding for another fifteen days.²³⁸ The legislature found that research indicates that these settlements included an increasing number of settlements in which the parties agreed that the tenant could continue to reside in the subject home.²³⁹ Based on these findings, the legislature determined that a pre-litigation mediation process, coupled with rent relief, “is likely to lead to significantly better outcomes than mediation that starts only after litigation is filed, or rent relief alone.”²⁴⁰

227. *SB393, SD1, HD3*, HAW. STATE LEGISLATURE, https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=393&year=2023 (last visited Dec. 18, 2023) (citing from summary of bill).

228. *Id.*

229. *Id.*

230. *Id.*

231. S.B. 393, 32d Leg., Reg. Sess. (Haw. 2023).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. Casey Harlow, *How the Mediation Process Works on Hawai‘i Evictions*, HAW. PUB. RADIO, (September 17, 2021, 11:39 AM), <https://www.hawaiipublicradio.org/local-news/2021-09-07/how-the-mediation-process-works-on-hawaii-evictions>.

237. *Id.*

238. *Id.*

239. Haw. S.B. 393.

240. *Id.*

Vermont H.B. 391

Vermont House Bill 391, an act relating to creating an eviction diversion program, is sponsored by seventeen state representatives of the democratic party.²⁴¹ The bill creates the procedure that, following a notice of termination for nonpayment of rent, a landlord or tenant may request to engage in mediation or another form of alternative dispute resolution before the tenant is ejected.²⁴² A Coordinator will screen landlords and tenants for eligibility to participate in and receive funds through this program, as well as provide landlords a document with contact information which a landlord may provide to a tenant with a notice of termination.²⁴³

There are many requirements for the tenant to participate in the program. Tenants are eligible to participate in the program if the tenant “is in arrears in an amount equivalent to three or fewer months’ rent.”²⁴⁴ The tenant’s household income must be at or below 100 percent of area median income and: (i) the tenant’s housing expenses are greater than household income; (ii) the tenant’s rent as increased by 10 percent or more in the previous 24 months; or (iii) the tenant or a member of the tenant’s household has experienced a medical emergency, incarceration, or job loss in the previous 12 months.²⁴⁵ The tenant must also have “not applied to the program in the previous 12 months” and the tenant must consent to participate in mediation or other appropriate method of dispute resolution, as determined by the Coordinator.²⁴⁶ A landlord may be eligible to participate in the program if they agree to participate in mediation or other form of dispute resolution and, as a condition of receiving payment, agrees to rescind the termination of tenancy.²⁴⁷

Once determined eligible for the program, the Coordinator will identify the causes and appropriate responses for the tenant’s failure to pay rent.²⁴⁸ The Coordinator will then identify financial aid and other supports and services that will help prevent future violations of the residential rental agreement.²⁴⁹ After successful mediation of the dispute, the Coordinator shall pay the landlord on behalf of the tenant no more than the actual amount of unpaid rent and fees, or “\$3,000,000.00.”²⁵⁰ The overarching goal of the program is to prevent the filing of ejection actions regarding residential tenancies.²⁵¹

This mediation program, by providing an opportunity for landlords and tenants to meet face to face, as well as financial support, gives tenants the opportunity to explain why they have been unable to pay rent. With knowledge of financial support, tenants can feel more at ease during mediation, knowing that they now may have the means to meet the financial burden previously hindering them.

241. The bill is sponsored by representatives Elizabeth Burrows, Josie Leavitt, Tesha Buss, Esme Cole, Mari Cordes, Leslie Goldman, Emilie Krasnow, Brian minier, Kate Nugent, Carol Ode, Phil Pouech, Monique Priestly, Barbara Rachelson, Mary-Katherine Stone, Heather Suprenant, David Templeman, and Jonathan Williams. H.B. 319, 2023 Leg., Gen. Sess. (Vt. 2023).

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. Vt. H.B. 391.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

Oklahoma S.B. 687

Oklahoma Senate Bill 687, or “Landlord and tenant; authorizing district court to refer eviction cases to mediation; prohibiting landlord recovery of rental dwelling under certain circumstances.”²⁵² This bill was introduced by Senator Mary Boren.²⁵³ The bill permits any district court, by agreement of the landlord and tenant in any eviction case, to refer the case for mediation.²⁵⁴ A referral to mediation may be made while the case is pending.²⁵⁵

The bill also provides that “if a landlord retaliates against a tenant because the tenant exercised her rights granted by law or because of her complaint to an appropriate agency as to the ability of a dwelling, and if the tenant is not in default as to the payment of rent, the landlord may not recover possession of a dwelling in any action or proceeding, cause the tenant to quit involuntarily, increase the rent, or decrease the services offered by the landlord within one hundred and eighty days” of such circumstances.²⁵⁶ Under this Act, a landlord who does not retaliate “may recover possession of a dwelling and [increase rent, decrease services, or recover in a proceeding] if the notice of termination, rent increase, or other act...if any, states the ground upon which the landlord, in good faith, seeks to recover possession, increase rent, or perform any other acts described [above].”²⁵⁷ Further, any landlord or agent of a landlord who is found to violate this Act shall be liable to the tenant in a civil action for actual damages sustained by the tenant, and punitive damages.²⁵⁸ Punitive damages in such an action range from one hundred dollars to two thousand dollars “for each retaliatory act where the landlord or landlord’s agent has been guilty of fraud, oppression, or malice with respect to such act; and court costs and reasonable attorney fees.”²⁵⁹

IV. ANALYSIS AND COMPARISON

Each of the bills mentioned above provides for some sort of mediation program in the event of a landlord-tenant dispute in which the landlord would, in some circumstances, be able to evict a tenant. Each bill attempts to alleviate some of the tension in landlord-tenant disputes regarding eviction by permitting the parties some control over the eviction process. These bills can provide tenants with a process where they will be seen and heard: the process of mediation. Mediation also provides tenants with important knowledge, both about the eviction process, as well as potential relief funds and services, to empower them to have a voice in the matter. For example, Hawaii’s new legislation provides rent relief funds and other services.²⁶⁰ Tenants who attempt to mediate eviction disputes are empowered with these services, whereas tenants who are forced to litigate likely have no knowledge that these funds even exist. In any event, tenants who choose mediation will also

252. S.B. 687, 59th Leg., Reg. Sess. (Okla. 2023).

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. Okla. S.B. 687.

259. *Id.*

260. S.B. 393, 32d Leg., Reg. Sess. (Haw. 2023).

benefit because they often are less knowledgeable than landlords in dispute resolution. When tenants are face eviction because they failed to pay rent, tenants are at a huge disadvantage if the landlord sues them. If tenants cannot afford to pay rent, it is unlikely that they can afford a lawyer, much less the skilled, expensive attorney a landlord would be able to afford.

The State Governments of Hawaii, Vermont, and Oklahoma are working on passing laws that permit or require mediation prior to the filing of an eviction action. However, each state's law is written slightly differently. One big difference among these state's laws is who chooses whether to mediate.

In Hawaii, the tenant must schedule the mediation. As long as the tenant attempts to schedule mediation, the landlord must delay filing an action for summary possession.²⁶¹ The bill also requires landlords, when giving notice of the potential for an action for summary possession, to provide a warning in a bold typeface that tells the tenant that if mediation is scheduled before the expiration of the fifteen-day period, the summary possession action will be delayed.²⁶² It is then the landlord's job to note the status of the mediation or settlement effort and proof of posting the notice to the mediation center.²⁶³

In Vermont, the landlord or the tenant can initiate a mediation prior to filing an action for eviction.²⁶⁴ However, it is ultimately the Coordinator's decision to evaluate eligibility to participate in the Program.²⁶⁵ The Coordinator looks at criteria from the bill itself, ensuring that the tenant meets certain requirements.²⁶⁶ The tenant must not be in arrears in more than three months' rent.²⁶⁷ The tenant's household income must not be at or above 100 percent of area median income.²⁶⁸ Along with these requirements, the tenant's housing expenses must be greater than household income, their rent has increased by more than 10% in the last two years, or the tenant or member of their household has experienced a medical emergency, incarceration, or job loss over the past year.²⁶⁹ Finally, to meet the requirements of the bill, the tenant must not have applied to the program in the last year; and the tenant consents to participate in mediation.²⁷⁰ A landlord's requirements aren't as stringent. Landlords only need to agree to participate in the mediation and, as a condition of receiving payment, agree to rescind the termination of tenancy.²⁷¹

In Oklahoma, however, the landlord and tenant must agree to refer the case to mediation.²⁷² Then, it is up to the district court to make the referral.²⁷³ This might lead to an interesting result. The act provides little incentive for the landlord to mediate. While landlords who retaliate or otherwise violate provisions under the new act shall be liable in an action for actual and punitive damages, punitive damages may be as low as one hundred dollars and only as high as two thousand dollars

261. *Id.*

262. *Id.*

263. *Id.*

264. H.B. 319, 2023 Leg., Gen. Sess. (Vt. 2023).

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. Vt. H.B. 319.

271. *Id.*

272. S.B. 687, 59th Leg., Reg. Sess. (Okla. 2023).

273. *Id.*

per retaliatory act.²⁷⁴ By requiring both parties to agree to refer the case to mediation, the problem of power imbalance between the landlord and tenant remains: the landlord may simply choose not to mediate.

Who chooses to mediate matters. If the tenant may choose to mediate, the tenant has the power to use a process that can level the playing field between them and the landlord. At minimum, it can buy them some more time before an eviction proceeding is filed. In some cases, tenants are provided resources to save them from homelessness. However, if using mediation is the landlord's choice, there is little incentive to mediate, especially if the market is good for tenants. A landlord would rather evict and find a new tenant who can certainly pay rent than take a chance on a tenant who has not been paying rent. If both parties must agree to mediation, the same problem arises, and the landlord may hold out instead of trying to resolve the problem.

Each act is also different with respect to the collateral services they provide along with mediation. Hawaii provides for a rent relief program. This program is available to participants in pre-litigation mediation to provide resources that will help avoid eviction and maintain stable tenancies.²⁷⁵ Vermont also provides funds through its program. The bill permits the Coordinator of the program to "identify eligibility and refer landlords and tenants to other available and appropriate sources of funding and support, including repair funds, rent arrearage funds, housing opportunity grant funds, existing rent support and subsidy programs, legal assistance programs, and mediation services."²⁷⁶ Meanwhile, the Oklahoma Act does not speak of rent relief options at all.

Hawaii and Vermont's acts will likely be more effective in preventing eviction as they provide funds and therefore a tangible solution to the landlord's problem. Tenants who are aware of the rent relief services and programs will feel more empowered than tenants who go into the mediation with no such services. With the help of a mediator, even tenants who do not have access to funding through this specific program might be able to find other programs and services to assist them. Funding is also helpful for landlords. Chances are, if the tenant is being evicted for failure to pay rent, the tenant will also be unable to pay their judgment even if the landlord wins the eviction lawsuit.

The weakness in the Oklahoma bill is that both the landlord and tenant must agree to participate in the mediation for a case to be referred to mediation.²⁷⁷ Without the mediation itself, the tenant (and perhaps, the landlord) will be unaware of potential services and options for relief elsewhere without the help of a mediator. In these circumstances, both parties will likely be left worse off if they do not reach an agreement in mediation. The tenant will likely be evicted and face the mountain of debt that comes with going to trial, or lost time and money in trying to go to trial pro se. The landlord, even if they win and the tenant is evicted, will also have lost time and money throughout the trial process, and may be ultimately unable to collect from the tenant.

274. *Id.*

275. S.B. 393, 32d Leg., Reg. Sess. (Haw. 2023).

276. H.B. 319, 2023 Leg., Gen. Sess. (Vt. 2023).

277. Okla. S.B. 687.

V. CONCLUSION

Mediation is a great tool that can be used in many interpersonal conflicts, especially in resolving landlord-tenant disputes regarding eviction. With the power imbalance between the parties and such high stakes, it is vital that each party be knowledgeable about options and consequences. It is also imperative for the parties to be able to communicate with each other. With the goal of keeping the tenant from being evicted, and maintaining the relationship between landlord and tenant, mediation will assist in preventing and mitigating future conflict.

DISABILITY IN DISPUTE: STUDENTS WITH DISABILITIES AND ADR IN
PUBLIC SCHOOLS[◊]

Bill Number: New York Assembly Bill 195
Bill Status: Referred to the Committee on Education on January 4, 2023.²⁷⁸

Bill Number: North Carolina House Bill 11
Bill Status: Enacted on April 3, 2023.²⁷⁹

Bill Number: Rhode Island House Bill 5772
Bill Status: Introduced on February 22, 2023.²⁸⁰

Bill Number: Rhode Island Senate Bill 63
Bill Status: Introduced on February 1, 2023.²⁸¹

Bill Number: Rhode Island House Joint Resolution 6377
Bill Status: Introduced on May 5, 2023.²⁸²

I. INTRODUCTION

In October of 2022, the Supreme Court decided *Luna Perez v. Sturgis Public Schools*.²⁸³ The Plaintiff, Mr. Miguel Luna Perez, was a Deaf student in Michigan's Sturgis Public School District ("the School District").²⁸⁴ Under the Individuals with Disabilities Education Act (IDEA), the School District was required to accommodate Mr. Perez's disability through the provision of a suitable accommodation, one which would have allowed him to receive a "free and appropriate public education" comparable to that of his fellow non-disabled classmates.²⁸⁵ This mandate, Sturgis

278. Assemb. B. 195, 2023 Leg., Reg. Sess. (N.Y. 2023).

279. H.B. 11, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023).

280. H.B. 5772, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

281. S.B. 63, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

282. H.J. Res. 6377, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

283. *Luna Perez v. Sturgis Pub. Schs.*, No. 21–887, slip op. at 1 (U.S. Mar. 21, 2023).

284. *Id.*

285. *Id.*

Public School District utterly failed to accomplish. Instead of providing Mr. Perez with qualified aides who were capable of translating classroom instruction into sign language for Mr. Perez, he spent years in the classroom in the care of either an unqualified aide, such as one who attempted to teach herself sign language, or an aide who was absent from the classroom for hours at a time.²⁸⁶ Sturgis Public School District inflated Mr. Perez's grades and advanced him from grade to grade regardless of his progress. A few months before what would have been his high school graduation, the Sturgis School District announced that it would not grant him his diploma.²⁸⁷

The Supreme Court considered whether Mr. Perez could seek compensatory damages under the Americans with Disabilities Act ("ADA") after his claims under the IDEA were settled shortly before an administrative hearing.²⁸⁸ The Supreme Court unanimously held that the exhaustion requirement of the IDEA did not preclude Mr. Perez from seeking relief under the ADA, since the IDEA only allows for equitable relief and the ADA can provide compensatory relief.²⁸⁹

One of the most prominent cases regarding a student with a disability to ever reach the Supreme Court, the impact of *Luna Perez* can be potentially seen in legislation regarding students with disabilities that was considered over the last year. With the expense of litigation that reaches all the way to the Supreme Court potentially lingering in the minds of legislators, a considerable amount of legislation regarding students with disabilities and alternative dispute resolution was introduced within the last legislative cycle. This article is devoted to discussing this legislation state-by-state, as well as analyzing its potential impacts, both positive and negative, on the students with disabilities in those states.

II. LEGISLATION CONCERNING STUDENTS WITH DISABILITIES & ALTERNATIVE DISPUTE RESOLUTION

A. *New York*

New York Assembly Bill 195 would amend two paragraphs in New York State Education Law § 4404, "Appeals procedures for children with handicapping conditions."²⁹⁰ Education Law § 4404 establishes an impartial administrative hearing process for resolving disputes regarding the provision of a free appropriate public education or the discipline of a student with disabilities.²⁹¹ This process is available to the parent(s) or guardian(s) of students with disabilities, as well as the board of education, trustees of the school district, or state agency responsible for providing an education for a child with disabilities.²⁹²

If enacted, A.B. 195's amendments would specify who is eligible to preside over these hearings involving students with disabilities.²⁹³ In order to avoid conflicts of interest and ensure objectivity, the hearing officers cannot be employed with any

286. *Id.* at 2.

287. *Id.*

288. *Id.*

289. *Luna Perez v. Sturgis Pub. Schs.*, No. 21–887, slip op. at 8 (U.S. Mar. 21, 2023).

290. Assemb. B. 195, 2023 Leg., Reg. Sess. (N.Y. 2023).

291. N.Y. EDUC. LAW § 4404 (2007).

292. *Id.*

293. N.Y. Assemb. B. 195.

state or local agency involved in the education or care of the child at issue.²⁹⁴ A hearing officer who is employed in the municipality of the school the child attends is likewise incapable of conducting that child's hearing.²⁹⁵ Additionally, no hearing officer employed, supervised, or otherwise controlled by a municipality, or one of its departments or agencies, is capable of presiding over hearings in or concerning a school district located in that municipality.²⁹⁶

The state of New York, particularly in New York City, is experiencing record numbers of impartial hearing requests regarding the provision of special education services to students with disabilities.²⁹⁷ The intent of A.B. 195 is to ensure the impartiality of special education hearing officers as this backlog is being addressed.²⁹⁸ Unfortunately, no further action has been taken since A.B. 195 was introduced and referred to the Committee on Education in January.²⁹⁹

B. North Carolina

North Carolina House Bill 11 amended Article 9C of Chapter 115C of the North Carolina General Statutes and renamed the article to "Schools for Deaf and Blind Students." Article 9C concerns the duties and responsibilities of the Board of Trustees which govern North Carolina's three schools for the Deaf and for the Blind. These schools are the Eastern North Carolina School for the Deaf, the North Carolina School for the Deaf, and the Governor Morehead School for the Blind. Article 9C also establishes the rights of the students and the parent(s) of the students that attend these schools.³⁰⁰

H.B. 11 granted parents the right to seek an impartial due process hearing regarding the final determination of their student's admission or continued eligibility for their chosen school's educational program.³⁰¹ A parent is able to pursue a due process hearing if their child is not determined to meet the eligibility criteria and is thus *never* granted admission to their chosen school's educational program, but also if the school subsequently determines that an admitted student no longer meets the eligibility criteria, and thus must return to public school.³⁰² However, parents are encouraged to seek mediation with their child's potential or current school for resolving any dispute regarding their student's eligibility determination or individualized education plan (IEP) prior to seeking a due process hearing.³⁰³

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. N.Y. Assemb. B. 195.

300. H.B. 11, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023).

301. *Id.*

302. *Id.*

303. *Id.*

C. Rhode Island

a. House Bill 5572

Rhode Island House Bill 5772 would amend Chapter 16-24 of the Rhode Island General Laws, entitled “Children with Disabilities.” The amendments would require school districts to obtain written parental consent before conducting an initial evaluation of a child for disabilities or placing a student in a special education program.³⁰⁴ Written consent by a parent is also required before a school district can: conduct a reevaluation of their child; place their child in a special education placement subsequent to the initial placement in special education; or make any changes to services their child receives in their existing special education program.³⁰⁵

If a school district is unable to obtain parental consent or a parent revokes consent to the reevaluation of their child following their child’s initial evaluation or placement, the school district is required to discuss with that parent whether the parent’s lack of consent will deny their child the right to a free appropriate public education.³⁰⁶ If the school district determines that a parent’s failure to or refusal to consent will result in the denial of a free appropriate public education, the school district is required to seek resolution of the issue through a mediation and/or a hearing.³⁰⁷

When a parent’s participation in the education of their child with disabilities is required, but that parent fails or refuses to participate, the school district is also compelled to make and document multiple efforts to contact the parent.³⁰⁸ If these efforts are attempted and documented, but parental participation is still unsecured, the school district is allowed to, but not required to, seek resolution through mediation and/or a hearing.³⁰⁹

b. Senate Bill 63

Rhode Island Senate Bill 63 would add a chapter to Title 42, entitled “State Affairs and Government,” of Rhode Island’s General Laws.³¹⁰ The newly added Chapter 165 would create the Office of the Special Education Ombud (“OSEO”), which would be independent of the Rhode Island Department of Education.³¹¹ The OSEO would be an impartial state office available to the many entities involved in the education of students with disabilities. The primary responsibility of the OSEO would be to direct students with disabilities and their guardians toward the most appropriate resources available, ensuring that schools and school districts comply with students’ individualized education programs.³¹²

The bill would make the OSEO responsible for collaborating with the Department of Education and the directors of special education at local education agencies

304. H.B. 5772, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. S.B. 63, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

311. *Id.*

312. *Id.*

to ensure that dispute resolution processes would be available to students and guardians.³¹³ The Office would also be responsible for ensuring that the office's staff and contractors are trained in dispute resolution.³¹⁴

S.B. 63 would also grant the OSEO the authority to investigate special education–related complaints communicated to the office by, or on behalf of, students with disabilities and their guardians.³¹⁵ However, prior to a formal investigation, the Office must make a reasonable effort to determine if the child or guardian has pursued the standard special education dispute resolution process.³¹⁶ Appropriate subjects for the ombud to investigate are complaints alleging that a school or school district failed to comply with an agreement arrived at through a special education dispute resolution agreement or determination made by the Department of Education.³¹⁷

The Special Education Ombud would have the authority to monitor the Department of Education's special education complaint and dispute resolution process, which would ensure transparency and accountability.³¹⁸ S.B. 63 would also require the Department of Education and Special Education Ombud to develop and implement a reasonable, accessible, and consistent method of evaluation regarding the special education services and dispute resolution process available to students with disabilities and guardians.³¹⁹ This method of evaluation would regularly collect feedback from those families that have accessed these services.³²⁰

c. House Joint Resolution 6377

Rhode Island House Joint Resolution 6377 would appropriate \$600,000 for an independent State Ombudsman office for a Facilitated Education Program during the 2023–2023 fiscal year.³²¹ These funds would be used to establish a program coordinator and scheduling assistant position that would direct and manage the appropriation funding and Facilitator scheduling, as well as at least one full– or part–time individualized education program (“IEP”) Facilitator.³²² The number of Facilitator positions will be determined based on the number of IEP plans that may require facilitation, based on a recommendation from the Rhode Island Department of Education.³²³ The funds will also be used to establish a training program for IEP Facilitators and other members of IEP teams.³²⁴

H.J.R. 6377's purpose in funding the State Ombudsman office is because facilitated Individualized Education Program (IEP) meetings are a beneficial tool to help special education planning teams reach agreements in the best interest of students with disabilities and avoid entering into a formal dispute resolution process.³²⁵

313. *Id.*

314. *Id.*

315. *Id.*

316. R.I. S.B. 63.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. H.J. Res. 6377, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

H.J.R. 6377 argues that an independent State Ombudsman office with a trained IEP Facilitator is essential to the process of solving conflicts in which an impasse has arisen or is expected to be particularly contentious.³²⁶ The Facilitator will help team members focus on the development of a student's IEP and encourage cooperation and enhanced communication, while addressing conflicts and disagreements amongst team members.³²⁷

III. ANALYSIS

A. *Dispute Resolution Processes*

The first major legislative trend this year among the bills discussed in the prior section is the establishment or adjustment of dispute resolution processes that involve students with disabilities. For example, New York's A.B. 195 amends New York State Education Law § 4404 to establish an impartial administrative hearing process for dispute resolution.³²⁸ The addition of this language to Education Law § 4404 would bring positive change to the existing alternative dispute resolution processes regarding students with disabilities in New York's public schools. The guaranteed objectivity of a hearing officer who is overseeing a dispute regarding the free appropriate public education or the discipline of a student with disabilities will likely better protect the rights of the student under applicable law. When a hearing officer's objectivity is threatened, the outcomes for the student and their family might be affected or diminished due to personal benefit or preference on that hearing officer's part.

By comparison, North Carolina's H.B. 11 applies only to its established Deaf and Blind schools.³²⁹ Since the needs of many Deaf and Blind students are so particularized, it is unsurprising that a parent would seek admission for their student at a school that specializes in the education of Deaf or Blind students. The curriculum provided by schools for the Deaf and the Blind is designed specifically to best suit the needs of their students. When a student is determined to not be eligible to receive services at one of these schools, either at the time of admission decisions or throughout their time as a student at one of these schools, a due process hearing system protects the legal rights of both the Deaf or Blind student and their families.

At the same time, the requirement that parents be encouraged to seek mediation to resolve disputes prior to due process hearings is excellent for all parties involved. It is not compulsory, allowing parents the right to immediately move to the due process hearing they are entitled to if that is their preference, but it does present and support the option. Mediation, as opposed to a due process hearing, allows all involved parties to move towards collaboration for the student at hand. A due process hearing requires that the parent and their student be adversaries against the school. Even if a student is determined to be ineligible to attend or continue to attend their chosen school, all involved parties want the same: for that student to receive a free appropriate public education they are entitled to. Mediation can help all

326. *Id.*

327. R.I. H.J. Res. 6377.

328. *See supra* Part II.A.

329. *See supra* Part II.B.

involved parties to recognize they are playing for the same team, instead of opposing ones.

Rhode Island's H.B. 5572 would require written parental consent prior to any major decisions being made regarding a student with disabilities.³³⁰ This consent is necessary for involving parents in the process of their student's education, as well as protecting their legal rights and the legal rights of their students. Unfortunately, the stigmatization of disability might lead some parents to withhold their consent.

If a school district is unable to obtain parental consent, the bill provides several legitimate avenues for addressing the lack of consent. Since these students have a right to a free appropriate public education, requiring conversations with the parents on how their refusal to give consent might prevent their student from realizing their right to a free public education is essential. Hopefully, many of these informal conversations will lead to the grant of parental consent. Ultimately, the escalation from informal conversation to a mediation or a hearing protects the student's right to a free appropriate public education, even if a parent doubts their child's disability status.

Requiring school districts to make multiple attempts to contact a parent regarding the education of their child with disabilities is essential to parental involvement in the process. However, there will still be cases where parental participation will go unsecured. The permissive nature of the bill allows school districts to seek resolution of these instances through mediation or hearings but does not require it. In cases where parents have demonstrated that they lack interest or investment in the education of their child with disabilities, a mediation, or a hearing can potentially address these concerns. At the same time, if the needs of the student are significant, the school district does not have to delay addressing that child's needs while mediation or another administrative process occurs.

B. Ombud Programs

Multiple pieces of legislation have been proposed in Rhode Island seeking to establish an ombud program relating to special education and students with disabilities. Rhode Island Senate Bill 63 would establish an Office of the Special Education Ombud, which would be highly beneficial to students with disabilities and the parents of those students.³³¹ Separating it from the Department of Education emphasizes its focus on the special education of students with disabilities, while requiring collaboration between the Office and the Department would demonstrate that both institutions are concerned with and focused on these students. The emphasis on dispute resolution processes in the bill should be celebrated. The Office's specific responsibility of ensuring that dispute resolution processes are available to students with disabilities and their guardians, as well as making sure the Office's staff and contractors are trained in dispute resolution, will undoubtedly lead to conflict regarding students with disabilities being solved in a more effective, collaborative manner.

Granting the Office oversight of certain actions or circumstances regarding the Department of Education will also benefit students with disabilities. The fact that the Office can investigate claims that a school or school district is failing to abide

330. *See supra* Part II.C.a.

331. *See supra* Part II.C.b.

by agreements or decisions reached during the Department of Education's special education dispute resolution process will protect both students with disabilities, as well as the schools and school districts. And the development of a method of evaluation regarding the Department of Education's special education services and dispute resolution process would help to continually improve these services and this process, resulting in better and better outcomes for all those involved in the education of students with disabilities.

While Rhode Island House Joint Resolution 6377 and S.B. 63 both propose versions of an Ombud office that deals with special education and individualized education programs, the former is certainly not as comprehensive as the latter.³³² The resolution's proposed reasoning for establishing the Ombud office is absolutely valid, but applies equally to S.B. 63, which would accomplish the goals of H.J.R. 6377 with more nuance and precision. However, realizing S.B. 63's level of detail might be significantly more expensive to implement than that of H.J.R. 6377. Regardless, the involvement of trained facilitative professionals in the individualized education process would likely be a benefit to all parties involved in the implementation of an individualized education plan for a student with disabilities.

IV. CONCLUSION

The considerable presence of legislation regarding students with disabilities and alternative dispute resolution during this past legislative cycle demonstrates that both are being considered more and more often in tandem. Much of the legislation would be highly beneficial to the education of students with disabilities in their respective states. Students with disabilities, their parents and guardians, and disability advocates should remain hopeful that this legislation will pass and become increasingly more common throughout the United States.

II. HIGHLIGHTS

In this section, the authors discussed specific statutes that promulgated unique and interesting topics. They are presented in alphabetical order, with no preference or editorializing.

*California Assembly Bill 389**

California Assembly Bill 389 would establish a Native American Heritage Commission to identify and catalog locations of "special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands."³³³ Assembly Bill 389 would provide an exception to the California Public Records Act permitting the Commission to collect and aggregate genealogical and tribal records, and would authorize the Commission "to make recommendations to a county coroner on human remains notification and repatriation procedures."³³⁴ Assembly Bill 389 would ensure that the Commission will be able to

332. See *supra* Part II.C.c.

333. Assemb. B. 389, 2023 Gen. Assemb., Reg. Sess. (Cal. 2023).

334. *Id.*

facilitate or ensure Native Americans have access to these private lands.³³⁵ Furthermore, when disputes arise between landowners and known descendants, the Commission will “mediate, upon application of either of the parties, disputes . . . relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.”³³⁶

Assembly Member James C. Ramos (D) introduced California Assembly Bill 389 on February 2, 2023.³³⁷ It was read for the first time and sent to print the same day.³³⁸ It was referred to the Committee on Natural Resources on March 27, 2023, and, following two amendments, passed the Assembly to the Senate on May 18, 2023, where it was read for the first time.³³⁹ Assembly Bill 389 was amended on June 5, 2023, and June 22, 2023.³⁴⁰ The bill was read in the Senate for a second time on June 26, 2023.³⁴¹

*Colorado House Bill HB 23-1026**

Colorado House Bill 23-1026 (HB23-1026) permits the court to appoint a legal representative to represent the best interests of the child with regard to the party seeking “family time” which is the term of art replacing “visitation rights” in the bill’s text.³⁴²

HB23-1026 clarifies how a child’s best interests should be considered.³⁴³ The bill reinforced the general underlying presumption courts have in deciding these types of disputes. The presumption, that a parental determination of what “family time” allowed is, serves as the default understanding of the child’s best interests.³⁴⁴ However, HB23-1026 provides that “[a] grandparent or great-grandparent may overcome the presumption upon a showing by clear and convincing evidence that the family time is in the child’s best interests.”³⁴⁵ HB23-1026 also permits the court to order disputes regarding “family time” to seek mediation and report the results back to the court within 60 days.³⁴⁶

HB23-1026 was sponsored by Representatives English, Joseph, DeGruy Kennedy, Lieder, Lindsay, Michaelson Jenet, Ricks, Valdez, Boesenecker, and Velasco; and Senators Fields, Buckner, Coleman, Cutter, Danielson, Exum, Ginal, Hansen, Kolker, Marchman, Moreno, Priola, Rodriguez, and Sullivan.³⁴⁷ It was introduced on January 9, 2023.³⁴⁸ It was engrossed on April 10, 2023, and underwent two revisions before being signed into law on May 23, 2023.³⁴⁹ The bill took effect on August 7, 2023.³⁵⁰

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. Cal. Assemb. B. 389.

340. *Id.*

341. *Id.*

342. H.B. 23–1026, 74th Gen. Assemb., Reg. Sess. (Colo. 2023).

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. Colo. H.B. 23–1026.

349. *Id.*

350. *Id.*

Hawaii House Bill 618[#]

Hawaii House bill 618 was introduced on January 23, 2023.³⁵¹ The bill was introduced by Representatives David Tarnas, Terez Amato, Ernesto Ganaden, Cedric Gates, Troy Hashimoto, Linda Ichiyama, Jeanne Kapela, Lisa Marten, Scot Matayoshi, John Mizuno, Amy Perruso, Mahina Poepoe, Gregg Takayama, Jenna Takenouchi, and Della au Belatti.³⁵² The Bill was first heard and recommended to be passed, unamended.³⁵³ The bill passed in the House and was then transmitted to the Senate on March 2, 2023.³⁵⁴ It has since been referred to the Senate Health and Human Services Committee and the Senate Committee on Judiciary.³⁵⁵

Hawaii House Bill 618 exempts parties from mediation in paternity proceedings where there are allegations of domestic abuse.³⁵⁶ The party alleging domestic abuse has the power to exempt the proceeding from mediation if they do not wish to participate.³⁵⁷ This bill also permits the court to order mediation in paternity proceedings where there are allegations of domestic abuse but there is no temporary restraining or protective order.³⁵⁸ The bill would alleviate safety concerns for those who have experienced domestic violence.³⁵⁹

Maryland Senate Bill 0087[#]

Maryland Senate Bill 0087 establishes the correctional ombudsman unit in the Attorney General's office.³⁶⁰ The unit, in response to a complaint or on the ombudsman's initiative, must investigate any administrative act found to be erroneous; conduct independent reviews and assessments relating to various policies, and; seek to resolve complaints against agencies through mediation or other conflict resolution methods, among others.³⁶¹ The bill requires the unit to refer the matter to appropriate authorities if the unit determines that an agency official acted in a manner warranting criminal charges or disciplinary proceedings.³⁶²

This bill was introduced by Senators Shelly Hettleman and Chris West.³⁶³ The bill was pre-filed to the Senate on November 18, 2022, and was amended multiple times throughout March 2023 after a hearing in January 2023.³⁶⁴ The Bill passed its second reading with amendments, and its third reading passed with a 44-1 vote.³⁶⁵ The bill has been engrossed by the Senate on March 29, 2023, and on March 30, 2023 as referred to the House.³⁶⁶

351. H.B. 618, 32d Leg., Gen. Sess. (Haw. 2023).

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. Haw. H.B. 618.

358. *Id.*

359. *Relating to Family: Hearing on H.B. No. 618 Before the Thirty-Second Legislature*, 32d Leg. 1-2 (Haw. 2023) (Statement of Matthew J Viola, Senior J.).

360. S.B. 87, 2023 Gen. Assemb., Reg. Sess. (Md. 2023).

361. DEP'T OF LEGIS. SERVS., MD. GEN. SESS., FISCAL AND POLICY NOTE S.B. 87.

362. *Id.*

363. Md. S.B. 87.

364. *Id.*

365. *Id.*

366. *Id.*

Minnesota House File 100⁺

Minnesota House File 100 legalizes recreational cannabis use and possession for adults over the age of twenty-one in the state of Minnesota.³⁶⁷ The bill establishes the Office of Cannabis Management, which is the principal regulatory authority overseeing licensing in the medical and recreational cannabis industry in the state.³⁶⁸ The Office of Cannabis Management is required to establish a Division of Social Equity, and the Division must “act as an ombudsperson for the office to [...] facilitate dispute resolutions” for complaints arising under this chapter.³⁶⁹ The purpose of the Division and the dispute resolution provision is to address the negative impacts of long standing social inequity within the cannabis industry.³⁷⁰

Representative Zack Stephenson (D) introduced Minnesota House File 100 on January 5, 2023.³⁷¹ It was read for the first time that same day and referred to the Commerce Finance and Policy Committee.³⁷² The Minnesota House passed House File 100 on April 25, 2023.³⁷³ On April 28, 2023, the Minnesota Senate passed Senate File 73, a companion bill to House File 100, which was then reconciled with House File 100 by the Minnesota Conference Committee.³⁷⁴ Minnesota Governor Tim Walz (D) approved and signed House File 100 on May 30, 2023, and the law took effect on August 1, 2023.³⁷⁵

Montana House Bill 317⁺

Representative Jonathan Windy Boy (D) (Box Elder) introduced Montana House Bill 317, also known as the Montana Indian Child Welfare Act, on January 24, 2023.³⁷⁶ This bill was introduced after *Haaland v. Brackeen*, No. 21–376, was granted certiorari by the Supreme Court of the United States, which led to national uncertainty over the status of the federal Indian Child Welfare Act (“ICWA”).³⁷⁷ Montana House Bill 317 codifies certain federal protections under the ICWA into state law.³⁷⁸ The bill provides that, at any stage of a proceeding involving the temporary or permanent removal of a Native American child from their home, the court may order or the parties may voluntarily agree to participate in an alternative dispute resolution proceeding.³⁷⁹ Alternative dispute resolution pursuant to this chapter refers to “a family engagement meeting, mediation, or a settlement conference.”³⁸⁰

367. Al Windham, *Minnesota Aims High With Recreational Cannabis*, WOMBLE BOND DICKINSON (June 23, 2023), <https://www.womblebonddickinson.com/us/insights/blogs/minnesota-aims-high-recreational-cannabis>.

368. H. File 100, 93d Leg., Reg. Sess. (Minn. 2023).

369. *Id.*

370. Steven P. Katkov et al., *Minnesota Adult-Use Cannabis Bill Emerges from Reconciliation*, LEXOLOGY (May 17, 2023), <https://www.lexology.com/library/detail.aspx?g=2cf5400e-70ac-4463-8fed-67480e99b1dc>.

371. Minn. H. File 100.

372. *Id.*

373. Katkov et al., *supra* note 370.

374. *Id.*

375. Windham, *supra* note 367.

376. H.B. 317, 68th Leg., Reg. Sess. (Mont. 2023).

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

Prior to its approval, this bill went through the House Committee on Human Services, and the Senate Committees on the Judiciary and on Public Health, Welfare, and Safety.³⁸¹ The Speaker of the House and President of the Senate approved and signed the bill on May 12, 2023, and Montana Governor Greg Gianforte (R) approved and signed the bill on May 22, 2023.³⁸² Montana House Bill 317 took effect July 1, 2023, and per its terms will terminate June 30, 2025.³⁸³

New Mexico Senate Bill 50^o

New Mexico Senate Bill 50, also known as the “Right to Repair Act,” grants the purchaser of a “dwelling,” defined as “a newly constructed single-family housing unit designed for residential use,” the right to seek the repair of a construction defect from the seller.³⁸⁴ Prior to filing a dwelling action, the purchaser is required to give written notice to the seller which “specif[ies] the reasonable detail of [an] alleged defect.”³⁸⁵ Importantly, the purchaser’s notice does not constitute notice of a claim for insurance purposes, since “the notice is intended to allow [the parties] an opportunity to amicably resolve any claimed defect issues without the need for formal arbitration or legal proceedings.”³⁸⁶ Within sixty days of receiving notice, and after inspecting the dwelling to determine the nature of and remedy to an alleged construction defect, the seller is required to either (1) offer to repair or replace the defect, (2) offer to provide monetary compensation, or (3) invoke any other remedies provided for in the construction contract between the parties.³⁸⁷

Senator Pete Wirth (D) introduced Senate Bill 50 on January 27, 2023.³⁸⁸ After passing through the Senate Tax, Business and Transportation Committee and the Senate Judiciary Committee, Senate Bill 50 unanimously passed the Senate on March 9, 2023.³⁸⁹ After four amendments, the bill passed the House on March 17, 2023.³⁹⁰ The Right to Repair Act was signed into law by Governor Michelle Lujan Grisham on April 6, 2023 and went into effect on July 1, 2023.³⁹¹

South Carolina Senate Bill 800^o

South Carolina Senate Bill 800 would amend the South Carolina Code to add certain provisions regarding post adoption contact agreements.³⁹² Notably, S.B. 800 would allow a court to require that a party seeking the “modification, termination, or enforcement of a post adoption contact agreement” to participate “in mediation or other appropriate alternative dispute resolution” prior to granting the requested change.³⁹³ A “party” is defined as “[an] individual who signed the post adoption

381. *Id.*

382. Mont. H.B. 317.

383. *Id.*

384. S.B. 50, 56th Leg., 2d Sess. (N.M. 2023).

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.*

390. N.M. S.B. 50.

391. *Id.*

392. S.B. 800, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

393. *Id.*

contact agreement currently in effect,” with any third-party beneficiary excluded.³⁹⁴ An adoptee is a party to their post adoption contact agreement if they are fourteen years of age or older at the time of the relevant action.³⁹⁵ The reasonable costs and expenses of alternative dispute resolution will be borne by the party, other than the adoptee, who files the action to modify, terminate, or enforce the post adoption contact agreement.³⁹⁶ However, if a party, other than the adoptee, is found by the court to have failed to comply with an existing post adoption contact agreement without good cause, that party is responsible for the costs and expenses of alternative dispute resolution.³⁹⁷

Senator Billy Garret introduced S.B. 800 on May 11, 2023.³⁹⁸ It was read and referred to the Senate Judiciary Committee the same day.³⁹⁹ As of July 27, 2023, S.B. 800 remains in committee.⁴⁰⁰

*Tennessee Senate Bill 710**

Senate Bill 710 is an act to amend Tennessee Code Annotated, specifically Title 36 Chapter 4.⁴⁰¹ The act is known and may be cited as the “Tennessee Domestic Relations Arbitration Act.”⁴⁰² The Act was introduced by Senator John Stevens (R).⁴⁰³ The Tennessee Domestic Relations Arbitration Act was introduced on January 30, 2023, where it was passed on first consideration.⁴⁰⁴ It was then passed on second consideration and referred to the Senate Judiciary Committee on February 2, 2023. On March 15, 2023, the bill was placed on the Senate Judiciary Calendar, and on March 21, 2023, it was officially assigned to a general subcommittee of the Senate Judiciary Committee.⁴⁰⁵

The Tennessee Domestic Relations Arbitration Act (TRDA) outlines the procedure and parameters of domestic relations arbitrations.⁴⁰⁶ The bill defines a domestic relations dispute as any contested issue arising out of a domestic relationship unless otherwise excluded.⁴⁰⁷ The TRDA offers Tennessee family law litigants the ability to exercise a degree of control regarding their resolution process, equal access to arbitration and alternative dispute resolution for both parties, and a less expensive and more efficient process.⁴⁰⁸ The passage of the TRDA would provide litigants of family law more options to avoid the cost and expense of a trial.⁴⁰⁹

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

398. S.C. S.B. 800.

399. *Id.*

400. *Id.*

401. S.B. 710, 113th Gen. Assemb., Reg Sess. (Tenn. 2023).

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. Tenn. S.B. 710.

408. Lisa J. Gill, *The Proposed Tennessee Domestic Relations Arbitration Act: A Road Map to Give Tennessee Family Law Litigants Equal Access to Arbitration*, 59 TENN. BAR J. 29, 31–32 (Mar. 2023).

409. *Id.*

*Texas Senate Bill 736**

Texas Senate Bill 736 is an act relating to mandatory arbitration for certain municipal fire departments and employee bargaining agents.⁴¹⁰ Senate Bill 736 was filed by Senator John Whitmore on February 7, 2023. On March 3, 2023, the bill was read for the first time and referred to the Senate Committee on Local Government.⁴¹¹ On March 27, 2023, the bill was read for a second and third time and was ultimately passed by the Senate.⁴¹² Then, on April 10, 2023, the bill was read for the first time in the House of Representatives and referred to the House Committee on Urban Affairs.⁴¹³ On April 27, the Urban Affairs Committee reported favorably on the bill without amendments. The bill was read for a second time at the House on May 19, 2023. On May 22, 2023, the bill was read for a third time, and passed in the House.⁴¹⁴ The bill was signed by Governor Greg Abbott (R) on June 2, 2023.⁴¹⁵

Senate Bill 736 outlines the process by which a fire department that serves a municipality with a population of 1.9 million or more and an association that serves as a bargaining agent for employees of these fire departments, must participate when an impasse is present in collective bargaining.⁴¹⁶ The procedure includes a written notice from each party to the other party, specifying the specific dispute for the purpose of the arbitration, and specifies at what point this written notice should be provided.⁴¹⁷

III. LEGISLATIVE CATALOG

In this section, the authors researched and compiled all the laws found relating to ADR— passed or pending – by state legislative bodies. This update was last updated in October of 2023. Accordingly, some statutes that were pending may not have been passed and some laws that were passed may have been challenged.

*Alabama**

Bill Enacted: None.

Bills Pending: 2023 H.B. 246 (would establish the Cosmetology Licensure Compact and includes a provision that requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution for conflicts between member states); 2023 H.B. 847 / S.B. 245 (would empower Alabama businesses and nonprofits to resolve disputes by mediation and arbitration rather than immediately proceeding to litigation).

410. S.B. 736, 88th Leg., Reg. Sess. (Tex. 2023).

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. Tex. S.B. 736.

417. *Id.*

No. 1]

Legislative Update

219

*Alaska****Bills Enacted:** None.

Bills Pending: 2023 H.B. 46 (authorizes the labor relations agency to appoint a mediator to resolve deadlocks in collective bargaining agreements between the Department of Health and other organizations); 2023 H.B. 105 / S.B. 96 (would include policies for implementing student conflict resolution programs); 2023 H.B. 137 / S.B. 74 (establishes the Interstate Physical Therapy Licensure Compact and requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution for conflicts between member states); 2023 H.B. 138 / S.B. 75 (establishes the Audiology and Speech-Language Interstate Compact and requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution and empower the Commission to resolve disputes between member states when requested); 2023 H.B. 149 / S.B. 130 (creates the Multistate Nurse Licensure Compact and requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution and empowers the Commission to resolve disputes between member states when requested; arbitration decisions are final and binding); 2023 S.B. 28 (prevents district judges and magistrates from ordering parties into mediation in disputes including workplace violence protective orders); 2023 S.B. 132 (imposes an annual educational facilities maintenance and construction tax on net earnings from self-employment and wages and appoints the Commissioner to act as a mediator in labor disputes).

*Arizona**

Bills Enacted: 2023 H.B. 2049 (establishes the Cosmetology Licensure Compact and includes a provision requiring the Compact Commission to adopt a rule providing mediation and binding dispute resolution); 2023 H.B. 2599 (establishes the authority to enter the Interstate Compact on Educational Opportunity for Military Children and includes a provision requiring the Compact Commission to adopt a rule providing mediation and binding dispute resolution); 2023 S.B. 1340 (gives private partners the right to engage in legal action to obtain enforceable judgments and awards against the toll road public-private partnership department and permits the department to establish procedures for use of alternative dispute resolution measures).

Bills Pending: 2023 H.B. 2602 (railroads are permitted to object to telecommunications companies intending to place a line, wire, or cable across a railroad on the grounds of serious threats to safe operations or violation of federal law, and after making a good-faith effort at resolution, parties may ask the commission for mediation

or arbitration assistance); 2023 H.B. 2687 (establishes the Counseling Compact and includes a provision requiring the Compact Commission to adopt a rule providing mediation and binding dispute resolution); 2023 S.B. 1117 (includes a provision stating any county that establishes an aggregate mining operation in any district within the county will establish a committee which will serve as a forum for meeting disputes between the aggregate mining owners or operators and the public); 2023 S.B. 1334 (establishes the Advanced Practice Registered Nurse Compact and requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution; if the Commission cannot resolve the dispute, the party-state may submit the issue to an arbitration panel which will render a final and binding decision); 2023 S.B. 1568 (requires the director, upon receipt of a written employee complaint, to investigate whether their employer violated the statute, and may either attempt to resolve issues through mediation, or with the consent of the employee, may request the attorney general to bring an action on behalf of the employee); 2023 S.B. 1699 (encourages state-employee litigants to engage in mediation as the initial method of dispute resolution and outlines related procedures and involves the Governor in reviewing agreements; the Governor's decision would be binding); 2023 S.B. 1670 (would require collective bargaining agreements of public employees to include grievance procedures that are final and binding; if an impasse occurs between the state and the exclusive representative, either party may request mediation services from the board who will assign a mediator from the Federal Mediation and Conciliation Service, unless the parties agree on another mediator).

*Arkansas**

Bills Enacted: 2023 H.B. 1082 (establishes the Occupational Therapy Licensure Compact and includes a provision requiring the Compact Commission adopt a rule providing mediation and binding dispute resolution); 2023 H.B. 1181 (establishes the Counseling Compact and includes a provision requiring the Compact Commission to adopt a rule providing mediation and binding dispute resolution); 2023 H.B. 1675 (amends the law regarding farm mediation. Limits attendance at the initial mediation meeting to the farmer and the creditor who served notice. Expressly excludes other creditors from this meeting); 2023 S.B. 91 (establishes the Audiology and Speech-language Pathology Interstate Compact and includes a provision requiring the Compact Commission to adopt a rule providing mediation and binding dispute resolution); 2023 S.B. 414 (amends the Regional Airport Act creating a procedure for annexation and detachment and requiring mediation should an authority and municipality fail to reach an agreement by the provided deadline).

Bills Pending: None.

*California**

Bills Enacted: 2023 A.B. 113 (amends § 1164 of the Labor Code permitting the board to immediately mandate mediation and outlines the procedure for conducting the mediation, including selecting the mediator); 2023 A.B. 1 (enacts the Legislature Employer-Employee Relations Act which empowers any employee or employee organization, or the Legislature, to collectively bargain 2023 A.B. 924 (requires dispute resolution professionals who receive complaints against them to submit a report to the State Bar of California).

Bills Pending: 2023 A.B. 20 (directs all mediation and dispute resolution-related fees to be borne by each party and all costs and fees of litigation to be borne by the filing party if the court has found no party out of compliance with a post-adoption contact agreement); 2023 A.B. 389 (empowers the Native American Heritage Commission to mediate disputes between landowners and descendants regarding the treatment of Native American human remains and establish a mediation procedure for mediation of disputes between tribes, museums, and agencies); 2023 A.B. 438 / S.B. 445 (regarding alleged violations of individualized education programs, a prehearing mediation conference will be scheduled within 15 calendar days of receipt by the Superintendent of the request for mediation); 2023 A.B. 886 (requires eligible digital journalism providers to participate in a final offer arbitration process to determine the percentage of advertising revenue); 2023 A.B. 1032 (requires disputes with the regional court interpreter employment relations committee to be resolved by binding arbitration or fact-finding mediation through the California Mediation and Conciliation Service); 2023 A.B. 1328 (establishes the Cosmetology Licensure Compact and directs the Commission to resolve disputes between member states and make rules for mediation and binding dispute resolution); 2023 A.B. 1605 (amends § 49701 of the Education Code, provisions of the Interstate Compact on Educational Opportunity for Military Children which directs the Commission to resolve disputes between member states and make rules for mediation and binding dispute resolution); 2023 A.B. 1672 (directs an employee's representatives and the recognized employee organizations failing to reach an agreement, to engage in mediation and outlines procedures for engaging in mediation); 2023 S.B. 113 (amends § 1164 of the Labor Code requiring the board to direct the parties to mandatory mediation and outlines the procedures for that mediation); 2023 S.B. 403 (empowers government departments to resolve complaints alleging unlawful practices with regard to discrimination on the basis of ancestry in

a variety of ways, including mediation); 2023 S.B. 716 (would explicitly state the intent of the Legislature to give state-excluded employees the right to arbitration as a fifth step in their grievance procedure); 2023 S.B. 874 (requires functioning assistive listening system or a computer-aided transcription system, be provided at the request of an individual who is deaf or hard of hearing, for all proceedings including court-ordered or court-provided dispute resolution).

*Colorado**

Bills Enacted: 2023 H.B. 1026 (requires parties in a dispute about grandparent or great-grandparent family time to seek mediation, and at the end of the mediation process, the court will either approve an agreement or set a hearing); 2023 H.B. 1236 (amends Colorado Revised Statutes, 27-80-303 (1)(b) and (5) clarifying language about the office of ombudsman for behavioral health access to care); 2023 S.B. 228 (creates the Office of Administrative Services for Independent Agencies within the Judicial Department which includes The Office of The Child Protection Ombudsman).

Bill Pending: 2023 H.B. 1120 (provides an appropriation for prelitigation mediation between renters and landlords).

*Connecticut**

Bills Enacted: 2023 H.B. 06688 (mortgagees agreeing to modify mortgages pursuant to the Exequiel Santiago Foreclosure Mediation Program, are required to send the modification to the mortgagor for execution at least 15 business days prior to the first modified payment due date, failure to do may result in sanctions); 2023 H.B. 06767 (prevents heating fuel dealers who own tanks and have exclusive fill requirements from denying fuel to consumers while a complaint is being mediated or investigated); 2023 S.B. 00009 (establishes the Physical Therapy Licensure Compact and includes a provision requiring the Compact Commission adopt a rule providing mediation and binding dispute resolution).

Bills Pending: 2023 H.B. 05833 (establishes a program to mediate disputes between condominium unit owners and associations within the Probate Court system); 2023 H.B. 06883 (establishes an Office of Mediation Services within the Department of Education's Bureau of Special Education to increase the mediation services provided rather than proceeding to a hearing); 2023 H.B. 06884 (permits boards of education who do not agree with teachers' or administrators' units, to submit the issues to the commissioner for mediation and includes directions for conducting these mediations); 2023 S.B. 00489 (enables employees believing their discharges

No. 1]

Legislative Update

223

violate rules can appeal their discharges to the State Board of Mediation and Arbitration, which can order appropriate remedies); 2023 S.B. 01028 (establishes the Interstate Compact on Educational Opportunity for Military Children and includes a provision requiring the Compact Commission adopt a rule providing mediation and binding dispute resolution).

*Delaware**

Bills Enacted: 2023 S.B. 1 (provides an appropriation to enable the Justice of the Peace Court to adapt its Online Dispute Resolution program to function as a mandatory dispute resolution process between landlords and tenants after an eviction is filed); 2023 S.B. 116 (adopts the PA Licensure Compact, which includes a provision that requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution).

Bills Pending: None.

*Florida**

Bills Enacted: 2023 H.B. 0033 (creates the Psychology Interjurisdictional Compact which includes a provision that requires the Compact Commission to adopt a rule providing for mediation and binding dispute resolution); 2023 H.B. 0487 (revises § 627.745 requirements and procedures for mediation of personal injury claims and motor vehicle claims and authorizes the designation of an administrator; and amends § 627.7015 providing guidance for mediation with disputed property insurance claims).

Bills Pending: 2023 H.B. 0439 (provides guidance to special magistrates for the type of relief to be included in negotiated settlements); 2023 H.B. 1395 (revises practice standards for community association managers and management firms replacing nonbinding arbitration, and permitting parties to submit a dispute to pre-suit mediation in accordance with § 720.311); 2023 S.B. 1158 (amends § 627.745 requirements and procedures for mediation of personal injury claims under \$10,000, permitting either party to demand mediation prior to the institution of litigation).

*Georgia**

Bills Enacted: 2023 S.B. 204 (allows a public school or school system to appeal findings and recommendations to an accreditation committee with the State Board of Education and, should the parties fail to reach a resolution, the appealing school or system has the right to submit the dispute to mediation).

224

JOURNAL OF DISPUTE RESOLUTION

[Vol. 2024

Bills Pending: None.

Hawaii[#]

Bill Enacted: None.

Bills Pending: 2023 H.B. 1501 (creates an office for an ombudsman for condominium associations, as well as establishing funds for the ombudsman and educational requirements for condominium association board members through classes offered by the ombudsman); 2023 H.B. 178 (establishes an ombudsman’s office and fund for the ombudsman relating to Homeowner’s associations and requires certain condominium, housing, and community board members to take classes offered by the ombudsman); 2023 H.B. 373 / H.B. 424 (creates an office to conduct contested hearings in certain departments, including the Department of Budget and Finance, Department of Land and Natural Resources, and the Department of Taxation); 2023 S.B. 594 (repeals a Hawaii Act that permitted voluntary arbitration for certain disputes regarding condominiums and changes conditions for mediation); 2023 S.B. 393 (creates funding for pre-litigation mediation program, as well as requiring landlords to engage in mediation before filing for eviction); 2023 S.B. 618 (when there are allegations of domestic abuse, the victim of the domestic abuse may be exempted from mediation in a paternity proceeding); 2023 H.B. 874 (“establishes collective bargaining unit for graduate assistants employed by the University of Hawaii and community college system”); 2023 S.B. 1195 (The Hawaii Housing Finance and Development Corporation must now report to the legislature on lease and rent negotiations); 2023 S.B. 1439 (creates funding for pre-litigation mediation programs that require landlords to mediate before filing for eviction); 2023 S.B. 1133 (Landlords must mediate before filing for eviction if the tenant schedules mediation, or attempts to do so); 2023 S.B. 2703 (“retains institutional, health, and correctional workers under bargaining unit (1); creates a separate bargaining unit (16) for Adult Corrections Officers of the Department of Public Safety’s Corrections Division”); 2023 H.B. 1531 (“establishes a collective bargaining unit for graduate assistants employed by the University of Hawaii”).

Idaho[#]

Bill Enacted: 2023 S.B. 1023 (The current law is amended to change provisions related to the office of Administrative Hearings and its officers).

Bills Pending: None.

Illinois[#]

Bills Enacted: 2023 H.B. 1595 (Establishes the procedure in which a department will review any EMS system suspension and then initiate an investigation before having a hearing on it, and then will act; this bill also allows members of the fire department’s collective bargaining unit to work for different fire department EMS systems).

Bills Pending: 2023 H.B. 1583 (Health Plan Operators must negotiate both rates and terms with ambulance service providers and health plan operators); 2023 H.B. 60 (adds a technical amendment to title of the Health Care Arbitration Act); 2023 H.B. 59 / H.B. 1876 (makes a technical amendment to the title of the Uniform Arbitration Act); 2023 H.B.1398 (adds employment condition of residency requirement for certain municipalities that may be included in arbitration decisions involving peace officers); 2023 S.B. 2430 (amends the Illinois Labor Relations Act, and establishes the power of the Illinois Labor Relations Board, to determine whether there is a refusal to bargain collectively in good faith with a labor organization that represents public employees is an appropriate unit; if no agreement can be reached through bargaining, the board may order arbitration).

Indiana[#]

Bills Enacted: 2023 H.B. 1493 (“Allows certain parts of the alternative dispute resolution fund to be used for guardian ad litem to assist juveniles in juvenile court); 2023 S.B. 412 (amends law on natural resource commission rules regarding lakes and reservoirs to eliminate provisions concerning the mediation of disputes”); 2023 S.B. 0007 (provides that a physician noncompete agreement is not enforceable under certain circumstances and “specifies a process by which a physician or employer may pursue mediation to determine a reasonable price to purchase a release from a non-compete agreement”).

Bills Pending: 2023 H.B. 1278 (Nondisclosure agreements are prohibited for public authorities or parties who negotiate on their behalf, and authorities nor parties also cannot enter into any economic development agreement that provides for an agreement of confidentiality).

Iowa[#]

Bills Enacted: 2023 H.F. 604 (“Authorizes ombudsman to investigate complaints issued by board of education examiners”); 2023 IA S.F. 1039 (relating to whistleblowing, the office of the ombudsman may decline investigation of a complaint in writing).

Bills Pending: 2023 IA S.F. 64 (Relates to a certain department of collective employees, including collective bargaining; applies to “collective bargaining procedures specifically applicable to public safety employees that are not applicable to other public employees, including procedures relating to... collective bargaining negotiations [and] arbitration procedures and provides a training program for those employees who work with inmates in de-escalation techniques when confronted with potentially violent interactions”); 2023 IA S.F. 458 (Bill that involves public employees, including collective bargaining matters, personnel records, and settlement agreements).

Kansas[#]

Bills Enacted: None.

Bills Pending: 2023 H.B. 2234 (Changes cost threshold when “State Construction projects require a negotiating committee and the selection of professional services from a list of qualified firms”); 2023 KS H.B. 2017 (“enacts the Uniform Family Arbitration Act”).

Kentucky[#]

Bills Enacted: 2023 S.B. 57 (Establishes procedures of dispute resolution between the Cosmetology Compact Commission and Licensees).

Bills Pending: 2023 H.B. 234 (Enacts Uniform Collaborative Law Act; regulates the use of collaborative law participation agreements as a voluntary form of Alternative Dispute Resolution); 2023 H.B. 43 (authorizes the Interstate Commission for Emergency Medical Services Personnel Practice to attempt to resolve disputes related to compact within member states).

Louisiana[#]

Bills Enacted: 2023 S.B. 137 (“Creates the office of the state child ombudsman”); 2023 S.B. 147 (Insurance providers with a claim for lost commissions must resolve the claim according to the dispute resolution terms that are in the contract applicable to them; when the terms are not explicit on dispute resolution, the parties shall

No. 1] *Legislative Update* 227

attempt to resolve the dispute through mediation and if that fails, arbitration, before the insurance producer may maintain an action for lost commissions).

Bills Pending: 2023 H.B. 545 (Provides that “any negotiation for procurement of telecommunication services by the Department of Public Safety & Corrections shall be conducted in accordance with requirements of telecommunication procurement procedures under the provisions” of the present law).

Maine[#]

Bills Enacted: 2023 S.B. 511 (“An Act to Clarify that Haulers are Under the Jurisdiction of the Logging Dispute Resolution Board”).

Bills Pending: 2023 S.B. 500 (“An Act to improve the office of the Child Welfare Services Ombudsman”); 2023 L.D. 911 (amending laws related to certain law enforcement interactions, and tools to determine residency during conflict resolution); 2023 H.B. 525 (protecting farmers and other farm workers by permitting them to organize to collectively bargain).

Maryland[#]

Bills Enacted: 2023 H.B. 984 (Modifies laws governing collective bargaining units for some public employees); 2023 H.B. 763 (submits a dispute to binding arbitration if impasse is declared when the Sheriff of Montgomery County and the Bargaining Representative cannot reach an agreement during negotiation on matters applicable to Sheriff’s office employees).

Bills Pending: 2023 H.B. 858 (Permits the Director of the Health Care Alternative Dispute Resolution Office to make rulings and decisions on issues of law in certain cases); 2023 S.B. 87 (establishes a correctional ombudsman unit in the attorney general office that investigates Department of Public Safety and Correctional Services, it may also refer matters to criminal charges or disciplinary proceedings).

Massachusetts⁺

Bills Enacted: None.

Bills Pending: 2023 S.B. 1048/ H.B. 1682 (In summary process for nonpayment of rent, default or dismissal will not be granted until parties attempt mediation or other ADR method); 2023 H.B. 3743

(provides that the purpose of the Somerville Affordable Housing Trust is, in part, to fund landlord-tenant mediations); 2023 H.B. 2036 (municipalities may establish pre-foreclosure mediation programs that aim to address all commercially reasonable alternatives to foreclosure on residential property); 2023 H.B. 1083 (establishes the Massachusetts Foreclosure Mediation Program, which provides mediation to mortgagor/mortgagee in the event of foreclosure); 2023 H.B. 1712 (after a petition for visitation rights by grandparent is made in the courts and return of service is filed, the case is referred to mediation, unless there is allegation of domestic violence or a no contact order is in effect; same for motion to modify visitation); 2023 H.B. 1334 (establishes the Office of Condominium Ombudsman, which is responsible for investigating and resolving complaints by unit members); 2023 S.B. 899 (establishes the manufactured housing commission and manufactured housing dispute resolution program, which is responsible for mediating complaints of residents or owners filed with the AG); 2023 S.B. 2352 (requires the veteran employment and reemployment rights division to offer mediation for veterans in disputes with employers and refer to AG if mediation is unsuccessful); 2023 H.B. 1526 (allows public employer to request mediation in the event a plaintiff claims injury as a result of a public employee's negligence; cannot force arbitration pursuant to one of these claims); 2023 S.B. 1217/ H.B. 1845 (amends section 9 of chapter 150E general laws, which includes a mediation provision); 2023 H.B. 3042 (includes a conciliation and mediation provision for anyone claiming unfair practices in admission to an educational institution); 2023 S.B. 86/ H.B. 145 (applicants for emergency or short term housing shall have access to an ombudsman who will mediate the dispute); 2023 S.B. 1407/ H.B. 2264 (grant funds may be used for community-based mediations); 2023 S.B. 289/ H.B. 453 (elementary school disciplinary responses should include mediation, conciliation, restorative justice, or other ADR measure); 2023 H.B. 2748 (grant funds may be used in part for mediation in eviction cases); 2023 H.B. 1199 (funds may be used for community violence prevention and intervention, including conflict mediation); 2023 H.B. 1882 (makes it unlawful for employer accused of psychological abuse to force case into mediation, arbitration, or an NDA); 2023 S.B. 666/ H.B. 1099 (claims board is to first refer collective bargaining disputes to mediation, then to arbitration if mediation fails); 2023 H.B. 2233 (disputes related to the physical therapy interstate compact shall have mediation and a binding ADR method available to them for resolution); 2023 H.B. 2256 (Interstate Medical Licensure Compact Commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 1251/S.B. 747/ H.B. 1211 (Interstate Nursing Licensure Commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 187/ H.B. 352 (Interstate Occupational Therapy Licensure

commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 1980/ H.B. 2986 (Interstate Psychology Licensure Commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 1107/S.B. 629 (creditor may not initiate arbitration to collect consumer debt after four years of the date the cause of action accrues); 2023 S.B. 148 (plaintiff does not have to participate in mandatory arbitration in claims of improper sale of cell phone location information); 2023 H.B. 1319 (creates a position within the office of Attorney General that assists in resolving landlord tenant complaints); 2023 S.B. 1149 (creates a three-member arbitration panel that shall resolve disputes between the commonwealth and public employees); 2023 H.B. 3275 (certain construction employees may pursue arbitration in disputes over project labor agreement); 2023 H.B. 3597 (violations of this bill grant a right to pursue arbitration where a qualified employee is terminated allegedly without cause); 2023 H.B. 378/ S.B. 152 (consumers may submit their claim to an arbitration tribunal); 2023 H.B. 720 (Executive Office of Elder Affairs shall establish an informal dispute resolution process for residences to appeal findings that require corrective action); 2023 S.B. 354 (amends section 370 of chapter 71 general laws, to include curriculum that teaches students ADR methods for resolving interpersonal disputes).

Michigan⁺

Bills Enacted: 2023 S.B. 268 (representative of an estate may seek arbitration in disputes involving payment of funeral goods and services); 2023 H.B. 4644 (person with power of attorney has a right to initiate and participate in ADR with respect to claims against the protected individual); 2023 H.B. 4438 (provides for compulsory arbitration in labor disputes involving police and fire departments); 2023 H.B. 5489 (Interstate public health commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 5738 (grants funding for mediation program).

Bills Pending: 2023 H.B. 4688/ S.B. 5/ H.B. 4236/ H.B. 4288 (Provides for mediation of grievances, unsure what kind of grievances from body of the act); 2023 S.B. 20 (permits mediation of appeals from county commissioner tax assessments on real property); 2023 S.B. 19/ SB 94 (tax tribunal has original jurisdiction over mediations for redetermination or reevaluating a tax assessment); 2023 H.B. 4169/H.B. 4504 (Interstate Public Health Commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 4005/ H.B. 4588 (provides that voluntary mediation of labor disputes shall tend to promote industrial peace; same goes for arbitration); 2023 S.B. 253 (Guardian ad litem may decide if the dispute is appropriate for mediation); 2023 S.B. 189 (Grants funding for mediation in civil rights cases); 2023 H.B. 4638

(Child's advocate shall mediate and educate public on issues surrounding public agency's treatment of children in their care); 2023 H.B. 4630 (disputes between MIDC and indigent criminal defendants shall be referred to mediation).

Minnesota⁺

Bills Enacted: 2023 H.F. 100 (Division of Social Equity shall facilitate dispute resolution in disputes with or by the cannabis industry).

Bills Pending: 2023 H.F. 446/SF 200 (Security interest in collateral agriculture property cannot be enforced unless dispute has proceeded through mediation); 2023 H.F. 1826/S.F. 1424 (individuals can consent to mediation when they file complaint about personal data held with the state being misleading or incorrect); 2023 S.F. 3281 (Interstate Nursing Licensure Commission shall provide mediation and a binding ADR method for disputes); 2023 H.F. 1215/ S.F. 2233(establishes the Minnesota Housing Mediation Grant Program and provides for mediations involving residential housing disputes); 2023 H.F. 2942 (provides for funding in community based mediation programs in Hennepin county); 2023 H.F. 1355/S.F. 1819 (Interstate commission shall provide mediation and a binding ADR method for disputes); 2023 H.F. 1750/ S.F. 2225 (creates the Office of Dispute Resolution within the field of data privacy); 2023 S.F. 1572 (Interstate Occupational Therapy Commission shall provide mediation and a binding ADR method for disputes); 2023 S.F. 2394 (establishes the Physician Assistant Licensure compact, and the Interstate physician assistant commission shall provide mediation and a binding ADR method for disputes); 2023 H.F. 2396 (Ombudsperson shall mediate disputes between residents and providers); 2023 S.F. 2656/H.F. 2738 (Interstate audiology and speech language pathology commission shall provide mediation and a binding ADR method for disputes); 2023 S.F. 2569 (establishes that if a municipality disagrees with proposed plans, the dispute may be referred to mediation); 2023 S.F. 1839 (street and community outreach programs shall inform the youth of mediation and other community based ADR programs available to them); 2023 S.F. 2742 (teachers can only strike if they attempt mediation first); 2023 S.F. 2990/ H.F. 3001 (Interstate Dentist and Dental Hygienist Commission shall provide mediation and a binding ADR method for disputes); 2023 H.F. 729 (Interstate Physical Therapy Commission shall provide mediation and a binding ADR method for disputes); 2023 H.F. 728/SF 1445 (Interstate Counseling Commission shall provide mediation and a binding ADR method for disputes); 2023 MN HF 1005 (Interstate Nursing Commission shall provide mediation and a binding ADR method for disputes); 2023 S.F. 857 (commissioner shall mediate any disputes); 2023 S.F. 2197 (case shall be referred to arbitration if the

No. 1]

Legislative Update

231

commissioner or council is unable to resolve it); 2023 H.F. 1700 (complaints related to safe staffing levels at hospitals shall be referred to expedited arbitration if unresolved after 30 days).

Mississippi⁺

Bills Enacted: 2023 H.B. 1029 (creates an interstate commission on education for children of members of the armed forces; interstate commission shall provide mediation and a binding ADR method for disputes among member states); 2023 H.B. 259 (established occupational therapy compact; interstate commission shall provide mediation and a binding ADR method for disputes).

Bills Pending: None.

Missouri⁺

Bills Enacted: 2023 H.B. 115 (Interstate Healthcare Commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 70/ S.B. 157 (Interstate Commission shall provide mediation and a binding ADR method for disputes).

Bills Pending: 2023 H.B. 279 (as part of winding up a dissolved LLC, the company shall settle its disputes by mediation or arbitration); 2023 S.B. 215/ SB 72 (a court may refer any individual civil case to mediation or another nonbinding ADR method); 2023 H.B. 634 (concerns regarding parent complaints at child's school shall be eligible for mediation upon request); 2023 S.B. 393/H.B. 285/ H.B. 407 (Interstate Medical Licensure commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 482/ H.B. 192/ S.B. 4 (establishes teacher's right to mediation by peers for grievances arising from competency evaluations); 2023 S.B. 670/H.B. 1399/ H.B. 1284 (modifies Interstate Social Work Commission to require the commission to provide mediation and a binding ADR method for disputes); 2023 H.B. 640/ S.B. 24 (requires the Board to provide mediations for jurisdictional disputes regarding 911 call centers); 2023 S.B. 5/ H.B. 253 (education commissioner shall attempt to mediate all disputes between school district and nonresident student); 2023 H.B. 214 (disputes regarding unequal pay shall attempt to be mediated); 2023 H.B. 661 (for children with disabilities, in the education system, due process hearings may be mediated upon consent by both parties); 2023 H.B. 162 (would implement the provisions of the Uniform Collaborative Law Act); 2023 S.B. 88 (Interstate commission shall provide mediation and a binding ADR method for disputes); 2023 H.B. 1163 (IEP disputes may be mediated if the parent and educational agency dispute the child's IEP); 2023 H.B. 348 (would include Missouri as a member of the Interstate Medical

Licensure Compact and the Interstate Medical Licensure Commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 129 (it shall be good public policy for kids to see both parents so custody disputes are best resolved through amicable ADR methods); 2023 H.B. 1253 (dissolution of a marriage while the woman is pregnant shall include a plan for resolving disputes amicably in the future); 2023 S.B. 234 (outlines responsibilities of the board of arbitration, who are responsible for resolving conflicts arising from school district boundary disputes); 2023 H.B. 505 (conciliation efforts should be used upon receipt of a complaint of unlawful discriminatory practices to the Equal Employment Opportunity commission).

Montana⁺

Bills Enacted: 2023 H.B. 112/ S.B. 345 (upon a finding that a parenting plan must be amended, alternative dispute resolution may be pursued by the parties); 2023 H.B. 281 (the board shall mediate disputes that arise by landowners in the disposal of human skeletal remains); 2023 H.B. 777 (adopted Interstate counseling compact, and the interstate counseling commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 162 (at any stage in a dispute between foster parent or birth parent, the court may order ADR or parties may consent to it); 2023 S.B. 214 (Interstate Speech-Language Pathology commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 155 (establishes Interstate Occupational Therapy Compact, and the interstate occupational therapy commission shall provide mediation and a binding ADR method for disputes); 2023 S.B. 54 (establishes the process where, if an assessed property tax is not paid under protest when due, mediation may continue but the party will not get refunded as a result of mediation going forward); 2023 H.B. 500 (when a youth's license is taken, the individual may be required to complete victim-offender mediation); 2023 H.B. 317 (at any stage in a proceeding involving the welfare of a Native American child, the court may order, or the parties may voluntarily pursue ADR); 2023 S.B. 362 (revised assessments of centrally assessed and industrial property are subject to mediation); 2023 H.R. 1 (provides that legislation involving arbitration or mediation must pass through the Judiciary Committee); 2023 H.B. 651 (provides that arbitration is an available remedy for violations under the Montana family and medical leave insurance act); 2023 S.B. 124 (multistate tax compact commission shall establish an arbitration panel for disputes that arise); 2023 H.B. 229 (denials of applications to dispensaries may be appealed to the state board of dispute resolution).

Bills Pending: 2023 H.B. 453 (claims of discrimination may be resolved by mediation); 2023 H.B. 678 (workers compensation claims may be

No. 1]

Legislative Update

233

voluntarily submitted to mediation); 2023 S.B. 446 (foster care panel may file a motion to appoint a mediator to advocate on a child's behalf in certain proceedings); 2023 S.B. 146 (Commission has authority to refer claims of wage discrimination to mediation or other ADR); 2023 H.B. 942 (establishes an education program for mediators in water and natural resource disputes); 2023 S.B. 271/ S.B. 42 (provides an arbitration provision for disputes between lessee's and easement holders); 2023 H.B. 893 (public records ombudsman shall provide facilitated ADR in certain circumstances); 2023 H.B. 762 (considers a parent's refusal to comply with an ADR provision vexatious if they try to unilaterally then approve the parenting plan).

Nebraska⁺

Bills Enacted: 2023 L.B. 298 (Interstate Teacher Licensure Commission shall provide both non-binding and binding ADR methods for disputes among member states).

Bills Pending: 2023 L.B. 561 (Interstate Cosmetology Commission shall provide mediation and a binding ADR method for disputes); 2023 L.B. 280 (Interstate Massage Commission shall provide mediation and a binding ADR method for disputes); 2023 L.B. 670 (Commission shall attempt to eliminate unfair employment practices through mediation, conference, conciliation, arbitration or persuasion); 2023 L.B. 507 (courts may provide restorative justice opportunities such as victim offender mediation in juvenile cases); 2023 L.B. 550 (establishes a procedure to assist parents or members schools in accessing dispute resolution providers); 2023 L.B. 479 (establishes the Advisory Council on Dispute Resolution); 2023 L.B. 456 (appeals from commission decisions determining a money awarded for hitting mountain lion or elk, are referred to arbitration); 2023 L.B. 424 (Commission on fair housing shall attempt to promote the Nebraska Fair Housing Act through conciliation and persuasion and resolve complaints through such).

Nevada⁺

Bills Passed: 2023 S.B. 37 (attorneys employed by the state may act as mediators under select circumstances); 2023 S.B. 223 (revises existing law to include mediation provisions for certain actions made pursuant to a trustee's sale); 2023 A.B. 309 (management agreements may provide for binding arbitration); 2023 A.B. 378 (provides guidelines for selecting and retaining a mediator for collective bargaining disputes); 2023 A.B. 148 (In counties with 700,000 or more residents, the district court must put forth a rule requiring mediation in cases involving custody or visitation of a

234

JOURNAL OF DISPUTE RESOLUTION

[Vol. 2024

child); 2023 A.B. 503 (Psychology Interjurisdictional Compact Commission shall provide mediation and a binding ADR method for disputes); 2023 A.B. 158 (Interstate Naprapathy Commission shall provide mediation and a binding ADR method for disputes); 2023 A.B. 153 (regulatory body enforcing this provision must first attempt a mediative approach to bring person within compliance before pursuing criminal action); 2023 A.B. 389 (before an offender is released from prison, the director may provide mediation to the offender and family or friends to provide the needed support to the offender); 2023 S.B. 431 (director may establish uniform dispute resolution policies); 2023 S.B. 442 (Interstate teacher compact commission shall provide binding and nonbinding ADR method for disputes among member states).

Bills Pending: None.

New Hampshire⁺

Bills Passed: 2023 H.B. 409 (Interstate Social Work Commission shall provide rules for mediation and another binding dispute resolution process); 2023 S.B. 129 (requires indigent mediation costs to be funded out of the mediation fund without reimbursement); 2023 S.B. 135 (Mediation shall be conducted within 30 days of the request of either party in special education disputes); 2023 H.B. 2 (Hearing officer shall allow parties to pursue mediation if it seems reasonable that the claims will be resolved at mediation); 2023 H.B. 235 (establishes a legislative committee to study the landlord and tenant mediation program in circuit courts).

Bills Pending: 2023 H.B. 373 (provides that disputes over payment for ambulance services between insurance and provider may be required to mediate); 2023 S.B. 173 (Commissioner is able to require parties to mediate prior to requesting a hearing on medical bill disputes); 2023 H.B. 536 (requires the commissioner of education to engage an independent mediator for appraisals of unused school district property that a chartered public school has made an offer to purchase or lease); 2023 H.B. 645 (decentralized autonomous organizations shall provide dispute resolution to its members); 2023 S.B. 64 (committee shall recommend legislation that supports the use of ADR in conflicts in resident-owned manufactured housing parks); 2023 H.B. 362 (commission on human rights shall encourage parties to negotiate a settlement).

New Jersey⁺

Bills Passed: None.

Bills Pending: 2023 S. 2007 (community violence prevention staffers shall be trained in conflict mediation); 2023 A. 4961/ S 3572 (consumer contracts shall not limit the ability to pursue ADR); 2023 S. 3511/ A. 5096 (physical therapy compact commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate); 2023 A. 245 (provides that the housing council shall conduct a mediation and review procedure under a certain set of circumstances); 2023 S. 855/A. 2146 (business assistance program shall establish a mediation procedure to review qualified business enterprise certification appeals); 2023 A. 5311 (Interstate counseling commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate); 2023 S. 2052/ A. 2770/ A. 1475/ A. 1704/ A. 3730/ A. 3093/ A. 3803/ A. 5285/ S. 3708/ S. 1517 (violations under the New Jersey Disclosure and Accountability Transparency Act shall not be sent to mediation); 2023 A. 5349 (Interstate social work commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate); 2023 S. 3795/ A. 4864 (members of the Foreclosure Mediation Assistance program shall assist victims of natural disasters); 2023 NJ A 2249/ S 3870 (Child Advocate shall make a good faith effort to resolve issues or problems, and shall have the authority to commence negotiations, mediation, or alternative dispute resolution in its advocacy efforts prior to, or in lieu of, the initiation of any action brought pursuant to this section); 2023 A. 5468/ A. 5467 (Government Records Council shall establish an informal mediation program to facilitate the resolution of disputes regarding access to government records); 2023 S. 3606/ A. 5194 (long-term care facilities cannot include a mandatory arbitration clause in their contracts for residents); 2023 A. 3119 (provides that certain law enforcement officers may proceed with special arbitration in disciplinary proceedings); 2023 A. 4908 (Family Empowerment Centers shall train parents to advocate for their child's needs in a manner that promotes alternative forms of dispute resolution and positive relationships between parents and professionals); 2023 A. 5298 (Interstate teaching commission shall promulgate a rule providing for both binding and non-binding alternative dispute resolution for disputes as appropriate).

New Mexico^o

Bills Enacted: 2023 S.B. 315 (Requires the Interstate Compact on the Placement of Children Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states, the cost of which shall be the responsibility of the parties to the dispute); 2023 H.B. 139 (requires metropolitan

court judges to assess and collect a mediation fee not to exceed five dollars for the docketing of small claims and criminal actions, with proceeds of the mediation fee deposited into the metropolitan court mediation fund); 2023 S.B. 206 (excludes the Procurement Code from applying to contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including mediators); 2023 S.B. 50 (when a seller receives notice pursuant to the Right to Repair Act, that notice does not constitute notice of a claim or trigger notice requirements to the seller's liability carrier, since the notice is intended to allow the purchaser and seller an opportunity to amicably resolve any claimed defect issues without the need for formal arbitration or legal proceedings); 2023 H.B. 2 (appropriates \$284,500 for children's mediation and \$736,600 for foreclosure mediation).

Bills Pending: 2023 S.B. 38 (includes arbitration and mediation as examples of legal services); 2023 S.B. 67 / H.B. 247 (requires the Interstate Medical Licensure Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and dispute resolution); 2023 H.B. 171 (requires the new Director of the Office of Peacebuilding to assist in the analysis and growth of programs such as alternative dispute resolution centers, statewide peace and justice centers, public school peer mediation, and dialogue and restorative justice programs); 2023 H.B. 214 (appropriates \$284,500 for children's mediation and \$736,600 for foreclosure mediation); 2023 S.B. 298 (requires the landlord of a mobile home park to disclose a statement explaining a prospective resident's right to request alternative dispute resolution, except for disputes over nonpayment of rent or utility charges or in the case of public safety emergencies, in a written rental agreement prior to the rental or occupancy of space in a mobile home park); 2023 H.B. 367 (includes arbitration and mediation as examples of legal services); 2023 S.B. 212 (requires the Interstate Compact Educational Opportunities for Military Children Commission (1) to attempt, upon the request of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and dispute resolution); 2023 H.B. 421 / H.B. 249 (requires the Psychology Interjurisdictional Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and binding dispute resolution); 2023 H.B. 248 (requires the Physical Therapy Licensure Compact Commission (1) to attempt, upon the request

of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and binding dispute resolution); 2023 H.B. 138 (requires metropolitan court judges to assess and collect a mediation fee not to exceed five dollars for the docketing of small claims and criminal actions, with proceeds of the mediation fee deposited into the metropolitan court mediation fund); 2023 H.B. 502 (allows a police citizen's review to subject an officer charged and prosecuted but not convicted of a crime to binding disciplinary action, including mediation); 2023 H.B. 281 (settling disputes by mediation or arbitration is considered winding up for the purposes of a dissolved limited liability company winding up its business); 2023 H.B. 391 (requires the Audiology and Speech-Language Pathology Interstate Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and binding dispute resolution); 2023 H.B. 392 (requires the Occupational Therapy Licensure Interstate Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes subject to the compact and that arise among compact states and between compact and noncompact states, and (2) to promulgate rules providing for both mediation and binding dispute resolution); 2023 S.B. 434 (requires the Public Regulation Commission to adopt procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration, and other alternative dispute resolution methods); 2023 S.B. 11 (requires the Secretary of the Workforce Solutions Department or their authorized representative to, after receiving a complaint alleging a violation under the Paid Family and Medical Leave Act, to (1) first allow for mediation upon agreement by all parties, and (2) hold a hearing within ten business days after a complaint is properly made, with due notice is given to the parties in dispute if mediation is refused by any party); 2023 H.B. 349 (makes a nurse's disciplinary action eligible for expungement once the nurse successfully completes 1) the requirements of the disciplinary order imposed by the board; (2) the terms of any settlement; or (3) any alternative dispute resolution); 2023 H.B. 461 (requires the Office of Children's and Families' Rights to (1) administer the children's and families' grievance process and (2) provide mediation services for disputed grievances); 2023 H.B. 113 (changes the election requirements for the office of magistrate to allow for the person elected to have a two-year degree and four years of work experience in, among other things, arbitration, and mediation); 2023 S.B. 482 (requires state-tribal education compacts to include provisions for dispute resolution, which may include nonjudicial processes such as mediation);

2023 S.B. 428 (a party to a court action for a private remedy under the Firearms In Unfair Practices Act may request an attempt to settle the claim in early mediation; but that request for mediation may be rescinded at any time if agreed to by all parties).

New York^o

Bills Enacted: 2023 A. 03007 / S. 04007 (Requires a temporary health care services agency to maintain a written agreement or contract with each health care entity, which must include procedures for the investigation and resolution of complaints about the performance of temporary health care services agency personnel); 2023 A. 03005 / A. 04005 / S. 00630 (allows the Native American burial site review committee or state archaeologist may use a mediator, at no cost to the property owner unless mediation is requested by the property owner, as part of the remind disposition process); 2023 A. 03003 (appropriates \$40,000,00 for services and expenses of the homeowner protection program intended to avoid foreclosures, including state and local foreclosure mediation programs); 2023 S. 04000 (appropriates \$3,129,000 for services and expenses related to the Department of Taxation and Finance conciliation and mediation program); 2023 K. 00714 (appropriates \$25,000 for Community Mediation Services, Inc. as part of grants in aid for services and expenses).

Bills Pending: 2023 A. 00257 (Requires new tenancy deposit protection program to include a system where tenant security deposits or advances on contract or agreement for the use or rental of real property are held by a third-party custodian and arbiter); 2023 S. 00461 / A.00706 / S. 03259 / A. 00925 (requires an arbitrator to make a reasonable inquiry into any facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding and disclose these facts to all parties before accepting an arbitration appointment); 2023 A. 00291 / S. 04689 (requires the court partners to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality); 2023 A. 00195 (requires a board of education or a board of trustees to offer the parents of disabled children the option of mediation as an alternative to an impartial hearing in matters regarding their children's education); 2023 S. 00300 / A. 02534 (implements a restorative justice model designed to reduce school suspensions through, among other things, mentoring and other youth development programs, including peer mentoring and conflict mediation); 2023 S. 00720 (allows the state civil complaint review board to offer, but not require, mediation by an experienced mediator between a complainant and a subject police or peace officer as an alternative to investigation and discipline); 2023 A. 00376 / S.02108 (requires the state civilian complaint review board to establish a mediation program through which a

complainant may voluntarily choose to resolve a complaint by means of informal conciliation); 2023 S. 00941 / A. 0721 (allows a tenant to invoke the use of the New York State Attorney General's mediation process with their landlord if their security deposit is not returned within twenty-one calendar days after their lease expired); 2023 A. 00745 / A. 06242 / A. 06615 (requires the new office of the cooperative and condominium ombudsman to provide meetings, mediation, arbitration, and other forms of alternative dispute resolution services); 2023 S. 01753 (forbids employers or employees from retaliating against an employee who has opposed any unlawful employment practice and who has testified, assisted, or participated in a relevant arbitration or mediation proceeding); 2023 A. 01694 / A. 6568 (allows for zoning boards and planning boards to be authorized by legislative bodies to provide for the use of voluntary and nonbinding mediation as an aid in fostering land use decisions); 2023 S. 02083 / A. 02118 (requires private arbitration organizations involved in fifty or more consumer arbitrations per year to collect, publish, and make available to the public in a computer-searchable database certain information relating to such arbitrations); 2023 S. 02216 / A. 03391 / A. 04860 (requires the Interstate Medical Licensure Compact Interstate Commission (1) to attempt, upon the request of a member state, to resolve disputes which arise among member states or member boards, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 A. 01946 / A. 05461 (requires a social services district to contract with an independent entity, approved by the office of temporary and disability assistance, or use designated trained staff at the supervisory level who have no direct responsibility for a participant's case to mediate disputes during conciliation conferences); 2023 A. 01810 (if a school board votes to adopt an employee salary freeze, the school board is required to enter into a ninety-day period of negotiations with its employees and/or their duly appointed representatives; and, at the request of either party, a public employment relations board mediator will be assigned to oversee and assist such negotiations); 2023 A. 02196 / S. 02830 (if certain counties and the Big Apple Transit Authority fail to reach an agreement regarding commuter rail service, the parties will be referred to the state comptroller for mediation); 2023 S. 02794 / A. 06350 (requires the Interstate Insurance Product Regulation Compact Commission (1) to attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and non-compacting states, and (2) to promulgate an operating procedure providing for resolution of such disputes); 2023 S. 02865 / A. 05614 (allows the committee on open government circumstances to resolve appeals by any method of dispute resolution prescribed by the rule of the committee including, but not limited to, mediation); 2023 S.

02868 (empowers the Compact to Award Prices for the Cure of Diseases Commission to provide for dispute resolution among compacting states or between the Commission and those who submit treatments and therapeutic protocols for consideration); 2023 A. 02589 / A. 03330 (requires that reported settlements include any internal mediation or other workplace resolution that results in the individual declining to further pursue the claim); 2023 S. 03438 / A. 06831 (establishes an informal mediation program to resolve disputes between agencies and requestors regarding public records, administered by the committee for open government); 2023 A. 03391 / A. 06421 (requires the Nurse Licensure Compact Commission (1) to, upon request by a party state, attempt to resolve disputes related to the compact that arise among party states and between party and non-party states and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 A. 03084 / S. 04643 (allows any aggrieved recreational vehicle dealer to request mediation with the vehicle manufacturer or distributor); 2023 A. 03266 (specifies that dispute resolution procedures be available for the purposes of resolving disputes between an electric corporation and subscribers for disputes involving the electric corporation's allocation of bill credits to the subscriber's electric account); 2023 S. 04123 / A. 06363 (identifies the child-centered mediation process, in suitable cases, as an appropriate way to help parents resolve child custody, parenting, and child support disputes); 2023 A. 03395 / S. 04785 / A. 06019 (requires the Department of Health Commissioner to assist negotiating parties to affect a voluntary resolution of the negotiations by appointing a mediator from a list of qualified persons maintained by the commissioner); 2023 S. 04092 (identifies peer mediation as a strategy for improving communication among students and between students and staff and for reporting of potentially violent incidents); 2023 A. 03671 (requires that parenting plans submitted to the court include provisions for the mediation of disputes); 2023 A. 03682 (allows municipalities to receive, mediate, and resolve cable service quality complaints from a franchise holder's customers within the municipality); 2023 S. 04797 / A. 04977 (requires parents to, through mutual and agreed upon considerations or mediation, construct a parenting time schedule that maximizes the time each parent has with the child and is consistent with ensuring the child's welfare); 2023 A. 04379 (allows the Correctional Ombudsman to act informally to resolve complaints, including providing referrals or information to complainants, expediting individual matters, mediating, or providing other assistance); 2023 A. 04534 / A. 06677 (identifies peer mediation programs and youth courts as evidence-based appropriate violence prevention and intervention strategies); 2023 A. 04477 (specifies that the labor board is empowered and directed, as hereinafter provided, to prevent any employer or state grant recipient from engaging in

any unfair labor practice; and that this power will not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes); 2023 A. 04694 (forbids the district attorney of Hamilton County from acting as an arbitrator, referee, or compensated mediator in any action, proceeding, or matter); 2023 S. 03506 (forbids judges of the supreme court, justices of the superior court, judges of the court of claims, judges of a county court, judges of the surrogate's court, judges of the family court, or judges from the court for the city of New York from acting as an arbitrator, referee, or compensated mediator in any action, proceeding, or matter); 2023 A. 04739 (specifies that any strike which occurs on a date or dates more than one year after delivery of an interest arbitration award to such employee's employer and public employee organization shall be presumed to have been one caused by acts of extreme provocation); 2023 S. 05282 (allows the courts or the parties in jurisdictions that have a private or publicly supported conciliation service to, at any time, consult with the conciliation service for the purpose of assisting the parties in formulating a plan for the implementation of a custody order or to resolve any controversy which has arisen in the implementation of a plan for custody); 2023 S. 00541 / A. 01893 (allows an employee or whistleblower to elect to have their name and personal identifying information be kept confidential until the relator deems sharing such information is necessary to establish, litigate, mediate, settle, or otherwise pursue the claim); 2023 S. 05638 / A. 07120 (defines the relevant factors an independent dispute resolution entity should consider when determining the appropriate amount to pay for a health care service); 2023 A. 05400 (requires that, if the counties of Orange or Rockland seek to withdraw from the metropolitan commuter transportation district, a special referee shall mediate the negotiations for withdrawal for a period of no longer than sixty days); 2023 S. 05785 / A. 05878 / A. 0631 (requires that, if ninety days prior to the intended change in an agreement, a TA-public employer and its employees have been unable to reach a new agreement, a mediator or mediator's representative of the public be appointed to assist the parties in effecting a voluntary resolution of the dispute); 2023 A. 05691 (requires schools to use the least severe action necessary to respond to any violation of the code of conduct before imposing a removal or suspension, such as through restorative practices, which include peer mediation); 2023 A. 05735 / S. 05269 (specifies that expedited child support settlement conferences are not for the purpose of parents' negotiation or mediation of disputes concerning income or issues related to the determination of child support); 2023 A. 06319 (considers any written communication from counsel for an aggrieved party to a covered entity or service provider requesting a monetary payment from that covered entity or service provider regarding a specific claim to have been sent in bad faith if sent prior to the date that is sixty days after either a

state attorney general or the division has received the notice required; not including arbitrations or mediations); 2023 A. 06351 (requires the office of child welfare advocate to develop and apply a process for receiving, documenting, fact-finding, and resolving or answering inquiries, grievances, and complaints raised by youth, biological parents, kinship caregivers, and foster parents, including prospective kinship caregivers or foster parents orally or in written form); 2023 A. 06539 / S. 06986 (requires mandatory trainings for all prospective and current police and peace officers regarding contemporary law enforcement topics on topics that include crisis intervention, mental health crises, mediation, conflict management, and conflict resolution); 2023 A. 05523 (allows a suspending authority to condition a suspended student's early return to school on the pupil's voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable); 2023 A. 06889 (If there are multiple parties seeking arbitration against the same party or parties, the proceeding may be brought in any court and county where any of the parties seeking arbitration resides or is doing business or where the arbitration was held or is pending); 2023 A. 06831 (requires the committee on open government to establish an informal mediation program to resolve disputes); 2023 S. 06873 (requires the Interstate Commission of Advanced Practice Registered Nurse Compact Administrators (1) to attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 S. 06872 (requires the Physical Therapy Licensure Compact Commission, the Interstate Occupation Therapy Compact Commission, and the Audiology and Speech-Language Pathology Interstate Compact Commission (1) to attempt to resolve disputes related to their Compacts that arise among party states and between party and non-party states (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 S. 06883 (requires the Psychology Interjurisdictional Compact Commission (1) to attempt, upon request by a Compact State, to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 K. 00458 (specifies that enforcement of an arbitration or mediation clause in any facility documents including contracts, agreements, statements, or bills is a "collections action" taken with respect to a debt for items and services that were purchased from or provided to a patient at a facility); 2023 S. 07222 / A. 07571 (requires the Interstate Teacher Mobility Compact Commission (1) to attempt, upon request by a Member State, to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States, and (2) to promulgate a rule providing for both binding

and non-binding alternative dispute resolution); 2023 S. 07237 (specifies school-based mental health mediation and suicide prevention and mediation as topics of training for school safety specialists); 2023 A. 07210 (empowers the Compact to Award Prices for the Cure of Diseases Commission to provide for dispute resolution among compacting states or between the Commission and those who submit treatments and therapeutic protocols for consideration); 2023 A. 02109 (requires the superintendent to certify an applicant seeking certification as a managed care organization if the superintendent finds that, among other things, the managed care program provides adequate methods of peer review, utilization review, and dispute resolution); 2023 A. 04921/ A. 05107 (allows the court to, at its discretion, authorize the use of conferencing or mediation at any point in proceedings regarding a dispute as to a surrogacy agreement); 2023 S. 04559 / A. 05903 (includes training in youth mediation/conflict resolution as a potential aspect of a school-specific training program for specialized certifications for school security guards); 2023 S. 01040 (identifies conflict mediation or resolution and peer mediation as a restorative practice available to schools in pursuit of using the least severe action necessary to respond to any violation of the code of conduct before imposing a removal or suspension); 2023 S. 07507 (in the event of an objection regarding an order not to resuscitate or decisions regarding life-sustaining treatment and hospice care, at the request of the objecting party or person or entity acting as a guardian, that objection must be referred to an ethics review committee for non-binding mediation); 2023 S. 03065 / A. 01202 (requires the Commissioner of Labor to develop a written policy statement outlining the responsibility of all state employees to behave in a respectful and civil manner, including dispute resolution procedures, including non-disciplinary procedures, that align with current practices and collective bargaining agreements); 2023 S. 05026 / A. 06040 (requires the Commissioner of Labor to, in surveys sent to freelance workers regarding the resolution of their claims, to ask whether or not the freelance worker pursued any such claims in court or through an alternative dispute resolution process); 2023 A. 02893 / S. 00580 (identifies conflict mediation as on type of “community violence prevention services”); 2023 A. 07811 (allows eligible digital journalism providers to initiate a final offer arbitration against a covered platform for an arbitration panel to determine the percentage of the covered platform’s advertising revenue remitted to the notifying eligible digital journalism provider); 2023 S. 07385 / A. 07541 (requires the 2024 report submitted by the city of New York regarding each contract subjected to an insurance program to include a description of the dispute resolution processes used for insurance or liability disputes arising during such contract’s performance, to the extent not legally privileged); 2023 S. 07590 (requires the Department of Health Commissioner to assist health

care providers and New York Health parties to affect a voluntary resolution of any negotiations by appointing a mediator from a list of qualified persons maintained by the commissioner).

North Carolina^o

Bills Enacted: 2023 H. 11 (requires that parents of children in schools for the Deaf and Blind be encouraged to seek mediation to resolve any disputes with regards to a student's eligibility determination or IEP prior to seeking a due process hearing); 2023 H. 116 (in each criminal case filed in the General Court of Justice that is referred to a community mediation center, a dispute resolution fee shall be assessed in the sum of \$60.00) per mediation of that criminal case, to support the services provided by the community mediation centers and the Mediation Network of North Carolina).

Bills Pending: 2023 S. 62 (requires that parents of children in schools for the Deaf and Blind be encouraged to seek mediation to resolve any disputes with regards to a student's eligibility determination or IEP prior to seeking a due process hearing); 2023 H. 58 / S. 74 (school students have the right to access peer-based mediation); 2023 H. 430 / H. 259 (appropriates \$2,000,000 over the 2023-2025 fiscal years for the Office of Administrative Hearings to allocate towards mediation services provided for Medicaid applicant and recipient appeals); 2023 S. 396 (empowers the Compact to Award Prizes for the Cure of Diseases Commission to provide for dispute resolution among compacting states or between the Commission and those who submit treatments and therapeutic protocols for consideration); 2023 H. 522 ((1) repeals the prelitigation mediation requirement in public record disputes and (2) allows the Supreme Court to adopt standards of conduct for mediators and to regulate mediator training programs); 2023 H. 532 (specifies that subsection (b) shall not be construed as prohibiting an emergency special superior court judge from serving as an arbitrator or mediator, as long as that service does not conflict with or interfere with the emergency special superior court judge's judicial service in emergency status); 2023 S. 437 / H. 596 (allows for a person who has been convicted of a hate crime or who has pleaded guilty or no contest to having engaged in a hate crime to be ordered to participate in a restorative justice session with the victim of the offense if the victim requests a restorative justice session; conducted by a member of a local Human Relations Commission, an attorney, a mediator, or an alternative dispute resolution professional who has training in racial equity education); 2023 S. 476 (specifies that the use of reference shall not relieve parties of the obligation to participate in a mediated settlement conference or other settlement procedure when referring issues of alimony, child custody, child support, and equitable distribution); 2023 S. 576 / H. 735 (whenever it appears to the court,

from the pleadings or otherwise, that an action involves a contested issue as to the custody or visitation of a minor child, the matter must, whenever possible, be set for mediation before or concurrent with the setting of the matter for hearing); 2023 H. 253 (requires local boards of education to include instruction on encouraging the resolution of conflicts and disagreements through peaceful means, including peer mediation); 2023 S. 564 (allows any documents and objects produced pursuant to the Improper Actions Claims Act to be used in connection with any civil action brought, including those regarding the counsel of other parties, arbitrators, and mediators); 2023 S. 633 / H. 584 (requires the landlord or management of a mobile home park to serve a homeowner a notice to quit in order to terminate a homeowner's tenancy, which must be in writing explain that the homeowner has a right to mediation); 2023 S. 718 (requires the Social Work Licensure Compact Commission (1) to attempt, upon request by a member state, to resolve disputes related to the Compact that arise among member states and between member and nonmember States, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 S. 705 (appropriates \$500,00 to provide grant funds to organizations that provide and promote services such as mediation, mentoring, job training, and counseling to vulnerable populations); 2023 S. 324 / H. 681 (requires the Interstate Medical Licensure Compact (1) to attempt to resolve disputes upon the request of a member state, which are subject to the Compact and which may arise among member states or member boards, and (2) (b) to promulgate rules providing for both mediation and4 binding dispute resolution); 2023 S. 514 (forbids any ombudsman for the Medicaid program, including for a prepaid health plan, serve as mediator between any licensed mental health/intellectual and developmental disabilities/substance use services facility and the Department of Health and Human Services); 2023 H. 805 (unless otherwise provided for in a condominium declaration, a condominium homeowners' association and a unit owner must engage in alternative dispute resolution before instituting legal proceedings); 2023 H. 812 (forbids a party to a restrictive employment agreement from waiving a requirement or stipulating to a fact to avoid a requirement, except as otherwise provided for or in the context of resolving an issue in litigation or other dispute resolution); 2023 S. 308 (mediator fees and other costs associated with mediation of child guardianship must be assessed in accordance with G.S. 7A-38.3B); 2023 H. 885 (if a board of education/board of directors of a charter school and a board of county commissioners disagree on an amount of money appropriated, a mediation must preside over a joint meeting and act as a neutral facilitator of disclosures); 2023 S. 356 / H. 447 (requires all in-person meetings, mediations, or other proceedings related to the appeal process of a franchised electric vehicle dealer to appeal the dealer's vehicle allocation

with the manufacturer or distributor must be conducted in North Carolina unless otherwise agreed to by the parties); 2023 H. 665 (requires the office Foster Parent Ombudsman Office to formulate a process for mediation between parties); 2023 S. 625 (allows the parent or parents of a minor adoptee who is in the custody of a county department of social services and the prospective adoptive parent or parents to voluntarily participate in a court-approved mediation program to reach a voluntarily mediated post-adoption contact agreement prior to executing a relinquishment); 2023 H. 542 (unless provided otherwise, sums due and payable to a homeowner's association as the result of an arbitration, mediation, or judicial decision are subject to the claim of lien); 2023 S. 754 (appoints Zachary C. Bolen of Wake County to the Dispute Resolution Commission for a term effective October 1, 2023, and expiring September 30, 2026).

North Dakota^o

Bills Enacted: 2023 H.B. 1393 (requires parties to written contracts for the sale of grain that do not contain provisions to settle disagreements concerning factors not governed by the bill to attempt to resolve those disagreements through mediation or arbitration); 2023 S.B. 2172 (requires the Interstate Insurance Product Regulation Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes which arise among compact states and between compact and noncompact states, and (2) to promulgate an operating procedure providing for resolution of such disputes); 2023 S.B. 2036 (allows landowners or political subdivisions that met the threshold for filing an appeal to the department of water resources to request assistance from the North Dakota mediations service to resolve grievances); 2023 S.B. 2205 (requires the Psychology Interjurisdictional Compact Commission (1) to attempt, upon the request of a state member to the compact, to resolve any disputes which arise among compact states and between compact and noncompact states, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 S.B. 2187 (requires the Counseling Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes which arise among compact states and between compact and noncompact states, and (2) to promulgate a rule providing for both mediation and binding dispute resolution).

Bills Pending: 2023 H.B. 1154 (Allows the informal disposition of an administrative or adjudicative proceeding to be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings).

Ohio^o

Bills Enacted: 2023 H.B. 33 (Establishes operating appropriations for fiscal years 2024-2025 and includes numerous rules regarding local and specific dispute resolution processes); 2023 S.B. 21 (specifies that the duties of Richland County juvenile division personnel include providing any counseling, conciliation, and mediation services that the court makes available to juveniles, whether or not the juveniles who request the services are parties to an action pending in the court).

Bills Pending: 2023 S.B. 12 (Requires the Director of Development to adopt rules that, among other things, establish a process to mediate complaints and to review veteran-owned business enterprise certification appeals); 2023 S.B. 27 (requires the Interstate Teacher Mobility Compact Commission (1) to attempt, upon request by a member state, to resolve disputes related to the Compact that arise among member states and between member and nonmember States, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 S.B. 37 (requires policies developed by the Board of Education of each city to address and ameliorate student absence to include, as an intervention strategy, requesting or requiring a parent, guardian, or other person having care of a habitual truant to attend truancy prevention mediation programs); 2023 H.B. 12 / H.B. 11 / S.B. 1 (forbids the Department of Education from making scholarship payments to the parent of an autistic student while any administrative or judicial mediation or proceedings with respect to the content of the student's individualized education program are pending); 2023 H.B. 16 (specifies mediation as a potential compromise or settlement of a complaint or charge made under the Ethics and Financial Disclosure Reform Act); 2023 H.B. 14 (specifies a list of types of child custody mediation communications that are not privileged; for example, a mediation communication that is contained in a written agreement evidence in a record signed by all parties to the agreement); 2023 H.B. 59 (requires applications made by certain nonprofit corporations for financial assistance to include a specific description of any services, programs, training, and legal technical assistance to be delivered by the applicant or by another person pursuant to a contract with the applicant, including and mediation programs); 2023 S.B. 56 (requires the Interstate Massage Compact Commission (1) to attempt, upon request by a member state, to resolve disputes related to the Compact that arise among member states and between member and nonmember States, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 H.B. 64. (subjects assessments for compensation of property or other interests sought to be appropriated by state agencies to the right of the parties to request mediation); 2023 H.B. 63 (requires school districts and

chartered nonpublic schools to provide classroom instruction on conflict resolution to students in grades kindergarten through twelve, integrated into an appropriate course of study as determined by each school); 2023 H.B. 96 (specifies that the right of an employer and employee to agree to submit a dispute regarding minimum wage payments to alternative dispute resolution, including arbitration, is not affected by other provisions of the bill); 2023 S.B. 89 (requires the Cosmetology Licensure Compact Commission (1) to attempt, upon request by a member state, to resolve disputes related to the Compact that arise among member states and between member and nonmember States, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 H.B. 151 / S.B. 83 (allows the State Employment Relations Board to continue mediation, order striking public employers and their employers to engage in collective bargaining until the expiration date of the agreement, or both); 2023 S.B. 101 (specifies that the testimonial privilege established under this bill does not apply concerning, among other individuals, a mediator acting under a mediation order issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children); 2023 S.B. 113 (requires the Office of Collective Bargaining to, among other things, coordinate the state's resources in all mediation, fact-finding, and arbitration cases as well as in all labor disputes); 2023 H.B. 170 (requires a licensee who wishes to renew a concealed handgun to certify that they reread the pamphlet prepared by the Ohio Peace Officer Training Commission that reviews firearms, dispute resolution, and use of deadly force matters); 2023 S.B. 401 (requires the Dentist and Dental Hygienist Compact Commission (1) to, upon request by a Participating State, to attempt to resolve disputes related to the Compact that arise among Participating States and between Participating States and non-participating States and (2) to promulgate a Rule providing for both mediation and binding dispute resolution); 2023 H.B. 122 (the definition of intimidation does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation); 2023 S.B. 28 (requires the Physician Assistant Licensure Compact Commission (1) to, upon request by a Participating State, to attempt to resolve disputes related to the Compact that arise among Participating States and between Participating States and non-participating States and (2) to promulgate a Rule providing for both mediation and binding dispute resolution); 2023 H.B. 49 (includes the enforcement of an arbitration or mediation clause in any hospital documents, including contracts, agreements,

statements, or bills, under the definition of a “collection action”); 2023 S.B. 132 (allows the Ohio Civil Rights Commission to, at any time, attempt to resolve allegations of unlawful discriminatory practices by the use of alternative dispute resolution, provided that, before instituting a formal hearing, it shall attempt, by informal methods of conference, conciliation, mediation, and persuasion, to induce compliance); 2023 S.B. 90 (requires the Social Work Compact Commission (1) to attempt, upon request by a member state, to resolve disputes related to the Compact that arise among member states and between member and nonmember States, and (2) to promulgate a rule providing for both mediation and binding dispute resolution).

Oklahoma^o

Bills Enacted: 2023 S.B. 593 (requires that, before bringing a civil action, a vehicle dealer, manufacturer, or warrantor injured by another party who has violated a provision of the Recreational Vehicle Franchise Act must serve a written demand for mediation on the offending party); 2023 S.B. 575 (requires the Counseling Compact Commission (1) to attempt to resolve disputes that arise among member states and between member and nonmember states, and (2) to promulgate a rule providing for both mediation and binding dispute resolution); 2023 H.B. 1794 (requires the Human Capital Management Division and Civil Service Division of the Office of Management and Enterprise Services to establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services for state agencies and state employees); 2023 S.B. 467 (requires the Teacher Mobility Compact Commission (1) to attempt to resolve disputes that arise among member states and between member and nonmember states, and (2) to promulgate a rule providing for both binding and non-binding dispute resolution); 2023 H.B. 1982 (authorizes the Oklahoma Water Resources Board to, among other things, to recommend mediation and refer parties in appropriate disputes to mediators and provide technical information to such mediators); 2023 S.B. 1091 (allows the Department of Securities to, at its discretion, inform investors of the availability of private dispute resolution, including arbitration and mediation, as an alternative to other courses of action); 2023 H.B. 1590 (empowers and obligates the newly created Oklahoma 9-1-1 Management Authority to, among other things, mediate disputes between public agencies and other entities involved in providing 9-1-1 emergency telephone services); 2023 H.B. 2422 (requires the EMS Personnel Licensure Interstate Compact Commission (1) to attempt to resolve disputes that arise among member states and between member and nonmember states, and (2) to promulgate a rule providing for both mediation and for binding dispute resolution); 2023 H.B. 2824 (requires the State Commissioner of Health

to promulgate rules that include, among other things, the establishment of an independent informal resolution process relating to long-term care); 2023 S.B. 623 (allows certain personal information acquired regarding motor vehicles to be disclosed for use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body); 2023 H.B. 1715 (if a successor beer distributor and an existing beer distributor fail to reach a written agreement on the fair market value within thirty days after the existing beer distributor receives the required notice, an arbitration shall be held for the purpose of determining the fair market value of the existing beer distributor's right to distribute in the existing beer distributor territory); 2023 S.B. 516 (requires brick-and-mortar charter schools to admit students who reside in the attendance area of a school or in a school district that is a party to an agreement with the United States Department of Education Office for Civil Rights directed towards mediating alleged or proven racial discrimination, unless notice is received from the resident school district that admission of the student would violate the agreement); 2023 S.B. 97 (modifies the Dispute Resolution Act to classify any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, as privileged and confidential).

Bills Pending: 2023 S.B. 361 (requires the Teacher Mobility Compact Commission (1) to attempt to resolve disputes that arise among member states and between member and nonmember states, and (2) to promulgate a rule providing for both mediation and for both binding and non-binding dispute resolution); 2023 S.B. 687 (allows any district court, by agreement of the parties, may refer any civil case, including any domestic relations case, any eviction case, or any portion thereof for mediation); 2023 H.B. 1020 / S.B. 1088 / H.B. 1619 (authorizes the Attorney General to mediate disputes between district attorneys and municipal, trial, county, or state agencies concerning the application of guidelines regarding receipt of percentages of proceeds from the sale of any property seized and forfeited); 2023 H.B. 2345 / H.B. 2225 / H.B. 2371 / S.B. 122 / S.B. 856 / S.B. 499 (specifies that volunteer mediators and employees of victim/offender reconciliation programs are immune from liability and have rights of confidentiality); 2023 H.B. 2076 (requires charter schools to admit students who reside in the attendance area of a school or in a school district that is a party to an agreement with the United States Department of Education Office for Civil Rights directed towards mediating alleged or proven racial discrimination, unless notice is received from the resident school district that admission of the student would violate the agreement); 2023 S.B. 643 / H.B. 2244 (requires that, before bringing a civil action, a vehicle dealer, manufacturer, or

warrantor injured by another party must serve a written demand for mediation on the offending party); 2023 H.B. 1924 (empowers and obligates the newly created Oklahoma 9-1-1 Management Authority to, among other things, mediate disputes between public agencies and other entities involved in providing 9-1-1 emergency telephone services); 2023 H.B. 1784 (if an Oklahoma state agency for which shared services were provided to by the Information Services Agency disputes the provision of shared services in accordance with its agreement the Agency, no voucher shall be processed against the funds of the delinquent agency until the dispute over services has been resolved, at which point a voucher may be processed in accordance with the terms of the dispute resolution); 2023 S.B. 732 (includes the enforcement of an arbitration or mediation clause in any hospital documents, including contracts, agreements, statements, or bills, under the definition of a “collection action”); 2023 S.B. 512 (requires the Department of Environmental Quality, following a request from the property owner or resident of an occupied dwelling who may be adversely affected by a mining operation shall for a public formal hearing, to hold a meditation within sixty days after the close of the deadline to file protests); 2023 H.B. 1659 (entitles intermediate care facilities for individuals with intellectual disabilities to an informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance); 2023 H.B. 2134 (requires an employer or bargaining agent claiming that an unfair labor practice has been committed by the other to notify the other in writing within six months of the commission of the alleged practice, and then, within ten days of such notification, for each party to select and name one arbitrator and immediately thereafter notify the other in writing of the name and address of the arbitrator selected); 2023 H.B. 1777 (excludes dispute resolution fees from the assessment of an administrative fee of ten percent on all fees collected by the court clerk for agencies other than the court not deposited into the court fund); 2023 H.B. 2723 (requires the Interstate Licensed Professional Counselors Compact Commission (1) to attempt to resolve disputes that arise among member states and between member and nonmember states, and (2) to promulgate a rule providing for both mediation and for binding dispute resolution); 2023 H.B. 2150 (declares any provision, covenant, clause, or understanding in a construction contract that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state as void and unenforceable); 2023 H.B. 1837 / S.B. 622 (allows certain personal information acquired regarding motor vehicles to be disclosed for use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body); 2023 H.B. 2287 (authorizes the Attorney General, when responding to any request made for the production of records, to exercise their

discretion and choose to resolve a request for review by mediation or by means other than the issuance of a binding opinion).

Oregon^o

Bills Enacted: 2023 H.B. 2001 (requires the Department of Land Conservation and Development to provide mediation services regarding housing needs when jointly requested by a local government or special district and a requestor); 2023 S.B. 306 (defines “informal dispute resolution” as voluntary consultation between the landlord or landlord’s agent and one or more tenants or voluntary mediation utilizing the services of a third party, but excludes mandatory mediation or arbitration); 2023 H.B. 3412 (a person participating in dispute resolution shall not be examined as to any communication made in the course of such activities or the findings thereof); 2023 S.B. 229 (patient safety data and reports obtained by a patient safety reporting program from participants are confidential and privileged and are not admissible in arbitration or mediation proceedings); 2023 S.B. 194 (defines “mediation” as assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations); 2023 S.B. 208 (juvenile courts may grant the permanent guardianship of an Indian child only if the court has offered the parties the opportunity to participate in mediation); 2023 S.B. 893 (allows the Housing and Community Services Department to award grants to private or public entities to support or develop programs and services designed to prevent evictions and homelessness, including eviction prevention mediation services); 2023 S.B. 981 (a state agency or the Department of Revenue may, at its discretion, choose not to offer for assignment to the Department of Revenue or a private collection agency a liquidated and delinquent account that is in litigation, including arbitration and mediation); 2023 S.B. 758 (attorney fees may not be awarded for a mediation that is conducted before a request for a special education hearing); 2023 S.B. 279 (requires the Interstate Teacher Mobility Compact Commission (1) to attempt, upon the request of a member state, to resolve any disputes which arise among compact states and between compact and non-compact states, and (2) to promulgate a rule providing for both binding and nonbinding alternative dispute resolution); 2023 H.B. 3395 (requires that (1) the Land Use Board of Appeals provide notice to a petitioner and a respondent of their option to enter into mediation within 10 days after service of a notice of intent to appeal, and (2) that notice be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.); 2023 S.B. 611 (a tenants’ committee may be entitled to informal dispute resolution if the landlord or landlord’s representative fails to meet with the

tenants' committee or fails to respond in good faith to the written summary).

Bills Pending: 2023 S.B. 913 (Requires the Director of the Employment Department to establish a dispute resolution process for employers and employees to request review hearings of decisions regarding family and medical leave insurance benefits); 2023 S.B. 5512 (appropriates \$8,179,037 for providing conciliation and mediation services in circuit courts, to be distributed by the Chief Justice of the Supreme Court after consultation with the presiding judges of the circuit courts); 2023 H.B. 2002 (data and information provided by participants to mediation are public records exempt from disclosure unless the public interest requires disclosure in a particular instance); 2023 H.B. 3443 ((1) makes mediation mandatory if a landlord or tenant initiates mediation for a dispute that is subject to mediation and (2) requires landlords to establish a mediation policy); 2023 H.B. 2225 (requires the presiding judge of each judicial district to establish an expedited parenting time enforcement procedure, which that may or may not include a requirement for mediation or participation in an alternative dispute resolution conference); 2023 H.B. 2634 (defines “informal dispute resolution” as voluntary consultation between the landlord or landlord’s agent and one or more tenants or voluntary mediation utilizing the services of a third party, but excludes mandatory mediation or arbitration); 2023 H.B. 2130 (makes the failure of an insurer to participate in good faith in a nonbinding environmental claim mediation requested by an insured concerning the existence, terms, or conditions of a lost policy or regarding coverage for an environmental claim an unfair environmental claims settlement practice); 2023 H.B. 2468 (clarifies that family childcare providers must exercise their labor organization rights in accordance with the rights granted to public employees, with mediation and interest arbitration as the method of concluding the collective bargaining process); 2023 H.B. 2889 (a city that agrees to the housing acceleration agreement agrees to join any department-initiated interagency mediation to identify policies and resources that would support housing production in the city); 2023 H.B. 3414 (if, at any time, a complainant filed a notice of appeal or initiated private litigation regarding any aspect of the application decision that was alleged to have been the subject of the housing law violation, the Housing Accountability and Production office’s continuing involvement may only consist of providing mediation at the request of the local government and complainant); 2023 H.B. 2697 (if a hospital nurse staffing committee is unable to reach an agreement on the staffing plan after 90 days of mediation, the Oregon Health Authority may impose a penalty against the hospital); 2023 H.B. 2805 (mediation is excluded from the definition of “convening”).

*South Dakota**

Bills Enacted: None.

Bills Pending: 2023 H.B. 1183 (Requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Occupational Therapy Licensure Compact); 2023 H.B. 71/2023 SB 252 (amends Tennessee Code Annotated, Section 12-3-514(b), to preventing a state governmental entity from entering a contract where binding arbitration is required).

*Tennessee**

Bills Enacted: 2023 H.B. 82/2023 S.B. 263 (Tennessee Code Annotated, Section 50-6-236(b)(4) is amended by deleting a subdivision and substituting another related to mediation); 2023 H.B. 942/2023 S.B. 361 (Dentist and Dental Hygienist Compact.); 2023 S.B. 775/2023 H.B. 1162 (makes various revisions to the “Uniform Arbitration Act”); 2023 H.B. 54/2023 S.B. 238 (amendments to Tennessee Code Annotated, Title 48, Chapter 1, Part 1 and Title 56, Chapter 6, Part 1, relative to the regulation of financial services; Adds the requirement that “prior to a broker-dealer or agent initiating a procedure described in a prior subdivision provide a the department written notice at least 60 days prior to the filling to vacate, modify, or confirm an arbitration award or an filing an action in a court of competent jurisdiction in issues relating to expungement of customer dispute information from the CRD system...”); 2023 H.B. 82/2023 SB 263 (amendments to Tennessee Code Annotated, Title 50, Chapter 6, relative to workers’ compensation; Particularly, Tennessee Code Annotated, Section 50-6-236(b)(4), is amended by deleting a subdivision and substituting: “(4) If the parties reach a full and final settlement, then either the mediator, or one (1) party’s legal representative upon agreement of the parties, shall reduce the settlement to writing and each party, or their representative, shall sign. A settlement reached during alternative dispute resolution proceedings is not effective until it has been approved by a workers’ compensation judge in accordance with the procedure provided in this chapter.”); 2023 S.B. 858/2023 H.B. 952 (establishes regulations regarding the licensing and regulating of certain medically related facilities, including: Tennessee Code Annotated, Section 68-11-208, is amended by deleting subsection and substituting provisions that further define and outline procedures for screening panels and any mediation/arbitration/dispute resolution sessions).

Bills Pending: 2023 S.B. 356 (specifies that the person representing an employee in mediation for a workers’ compensation claim may be a labor

representative; requires the department of labor and workforce development to promulgate rules to allow a labor representative to participate with a party engaged in mediation or another form of alternative dispute resolution for a workers' compensation claim.); 2023 H.B. 625 (specifies that the person representing an employee in mediation for a workers' compensation claim may be a labor representative; requires the department of labor and workforce development to promulgate rules to allow a labor representative to participate with a party engaged in mediation or another form of alternative dispute resolution for a workers' compensation claim); 2023 S.B. 710 (amending TCA Title 36, and enacts the "Tennessee Domestic Relations Arbitration Act."); 2023 H.B. 1177 (amends TCA Title 36 and enacts the "Tennessee Domestic Relations Arbitration Act."); 2023 S.B. 566 ("increases from \$5.00 per day to \$15 per hour the minimum amount that an arbitrator or umpire is entitled to for time spent actually engaged in their duties for an arbitration"); 2023 H.B. 492 ("increases from \$5.00 per day to \$15 per hour the minimum amount that an arbitrator or umpire is entitled to for time spent actually engaged in their duties for an arbitration").

*Texas**

Bills Enacted: 2023 S.B. 736 (Requires arbitration for certain municipal fire departments and employee bargaining agents); 2023 S.B. 2101 (outlines communication of rights crime victims, including the asserting a victim's right to request victim-offender mediation coordinated by the victim services division of the department); 2023 S.B. 1401 (concerning the procedures and reimbursement of victims of sexual assault. Including the asserting a victim's right to request victim-offender mediation coordinated by the victim services division of the department); 2023 H.B. 3186 (relating to "youth diversion strategies and procedures for children accused of certain fine-only offenses in municipal and justice courts and related criminal justice matters; authorizing fees." Includes the participation of mediation or other dispute resolution process in a list of diversion strategies); 2023 S.B. 1887 (concerning College Credit Requirements and Transfer Credits, and outlines what must be included in a report of nontransferable credit; including if the institution complied with the dispute resolution process under Section 61.826); 2023 S.B. 1650 (allows agent (with powers of attorney) to defend, submit to alternative dispute resolution, settle, or compromise litigation to which the principal is the party concerning a certificated or uncertificated ownership interest); 2023 H.B. 8 (concerning College Credit and Transfer Credits; Outlines what must be included in a report of nontransferable credit; including if the institution complied with the dispute resolution process under Section 61.826.); 2023 S.B. 1768 ("relating to the correction or removal of certain obsolete provisions of the

Property Code;” removes provisions relating to dispute resolution.); 2023 H.B. 2022 (processes and procedure concerning residential construction liability; deletes provisions relating to dispute resolution).

Bills Pending: 2023 S.B. 1474 (Includes provision where, “a child with disabilities is guaranteed the rights provided under federal law including the right of dispute resolution options to ensure proper and dull implementation of an individualized education program”); 2023 H.B. 3781 (establishes that “a child with disabilities is guaranteed the rights provided under federal law including the right of dispute resolution options to ensure proper and dull implementation of an individualized education program”); 2023 H.B. 3768 (“a decentralized unincorporated association, in the association’s name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution”); 2023 H.B. 2843 (includes provisions outlining the policy for negotiated rulemaking and alternative dispute resolution procedures); 2023 H.B. 4611 (includes provisions outlining the policy for negotiated rulemaking and alternative dispute resolution procedures); 2023 H.B. 3462 (ombudsman programs administered by the Health and Human Services Commission; provides that one of the functions the office of ombudsman must perform is the providing of dispute resolution services for the health and human services system); 2023 H.B. 690 (the establishment of the office of community violence intervention and prevention within the Department of State Health Services and gives the office power to use of alternative dispute resolution and other methods for addressing incidents of violence); 2023 H.B. 3562 (“relating to durable powers of attorney and the construction of certain powers conferred in those durable powers of attorney;” allows agent (with powers of attorney) to defend, submit to alternative dispute resolution, settle, or compromise litigation to which the principal is the party concerning a certificated or uncertificated ownership interest); 2023 H.B. 285 (process and procedures in regard to the expulsion of public school students after engaging in serious offenses; including arbitration process); 2023 S.B. 1432 (allows for an administrative law judge assigned to preside over a contested case or alternative dispute resolution proceeding to use video conferencing technology to conduct the proceeding); 2023 H.B. 1437 (“relating to an appraisal process for disputed losses under personal automobile or residential property insurance policies;” provides a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policy holder and the insurer); 2023 S.B. 2471 (allows for a person who has legal authority to act on behalf of the employee or their estate to submit a request for medical dispute resolution); 2023 H.B. 2778 (allows for an administrative law judge assigned to preside

over a contested case or alternative dispute resolution proceeding to use video conferencing technology to conduct the proceeding); 2023 S.B. 1544 (special appointments in suits affecting the parent-child relationship; States the an attorney ad litem roles among other things encourage settlement and the use of alternative forms of dispute resolution); 2023 S.B. 110 (outlines procedures to prevent certain discrimination, authorizes civil penalties, and requires that the Commission establish an office of alternative dispute resolution); 2023 S.B. 1996 (“relating to certain personnel policies of the Texas Department of Criminal Justice and to certain related duties of the Texas Board of Criminal Justice;” permits employee/employer dispute resolution); 2023 H.B. 4194 (“relating to an appraisal process for disputed losses under personal automobile or residential property insurance policies;” provides a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policy holder and the insurer); 2023 S.B. 1306 (Amendments regarding the application of balance billing prohibitions and out-of-network dispute resolution procedures to certain self-insured or self-funded employee welfare benefit plans); 2023 H.B. 2441 (among other things related to the economic regulation of water and sewer service this bill outlines alternative dispute resolution procedure and its availability); 2023 H.B. 3422 (“relating to the correction or removal of certain obsolete provisions of the Property Code;” removes provisions relating to dispute resolution); 2023 S.B. 2525 (creates the Family and Protective Services Board; outlines how the board shall develop and implement negotiated rulemaking and alternative resolution procedures); 2023 H.B. 4254 (Process and Procedure of state administrative law judges; allows administrative judge to order); 2023 H.B. 5103 (“that in rendering an order appointing joint managing conservators, the court shall if feasible recommend that the parties use an alternative dispute resolution methods before requesting enforcement or modification to the terms of the joint conservatorship through litigation” (among other factors)); 2023 H.B. 4606 (outlines alternative dispute process where district and department of education are unable to reach an agreement in a juvenile justice alternative education program); 2023 H.B. 4309 (outlines prohibition against disclosures of confidential information by employees in various setting, including dispute resolution); 2023 H.B. 3424 (eligibility and training requirements for commissioned security officers and personal protection officers; lists “nonviolent dispute resolution” as one of a number of factors that must be included in the course on handgun proficiency and self-defense course); 2023 H.B. 4083 (amendments regarding the “availability of certain working papers and electronic communications of certain administrative law judges and technical examiners under the public information law; papers related to ADR are within exemptions”); 2023 H.B. 1592 (amendments regarding the application of balance billing

prohibitions and out-of-network dispute resolution procedures to certain self-insured or self-funded employee welfare benefit plans); 2023 H.B. 3486 (higher Education Curriculum process and procedure, including course enrollment and credit and degree and certificate programs. outlines what must be included in a report of nontransferable credit; including if the institution complied with the dispute resolution process under Section 61.826); 2023 H.B. 2926 (claims for benefits of public safety employees; allows for a person who has legal authority to act on behalf of the employee or their estate to submit a request for medical dispute resolution); 2023 H.B. 3620 (the repeal of certain offenses and removing certain regulations on cannabis and marijuana. Mediation is listed as a possible condition of community supervision); 2023 S.B. 1978 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Dentist and Dental Hygienist Compact); 2023 H.B. 5289 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Licensed Professional Counselors Compact); 2023 S.B. 1100 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Occupational Therapy Licensure Compact); 2023 H.B. 3039 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Dentist and Dental Hygienist Compact); 2023 H.B. 2544 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Physician Assistant Licensure Compact); 2023 H.B. 4404 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Advanced Practice Registered Nurse Compact); 2023 H.B. 1683 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Occupational Therapy Licensure Compact); 2023 H.B. 4857 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Cosmetology Licensure Compact); 2023 H.B. 1875 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Audiology and Speech-Language Pathology Compact); 2023 H.B. 2557 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Licensed Professional Counselors Compact); 2023 H.B. 1012 (outlines procedures to prevent certain discrimination; authorizing civil penalties; includes provisions that require that the Commission establish an office of alternative dispute resolution); 2023 S.B. 909 (“relating to municipal civil service for fire fighters and police officers.” Including a provision that outlines the

procedure for the director to choose a neutral arbitrator where “a firefighter and their department head cannot agree on the selection of a hearing examiner on or within 10 business days of the appeal”); 2023 S.B. 1505 (“relating to youth diversion strategies and procedures for children accused of certain fine-only offenses in municipal and justice courts and related criminal justice matters;” includes the participation of mediation or other dispute resolution processes in a list of diversion strategies); 2023 H.B. 3711 (Interstate compact on border security and refugee resettlement; States that “the commission shall attempt to resolve any disputes relating to the compact between states by enacting a bylaw or rule providing for both mediation and dispute resolution”); 2023 H.B. 2668 (concerning the procedures and reimbursement of victims of sexual assault, including asserting a victim’s right to request victim-offender mediation coordinated by the victim services division of the department); 2023 H.B. 1546 (“fees, costs, and expenses in family proceedings;” mediation is listed as a possible condition of community supervision); 2023 S.B. 2462 (“relating to the classification of a grievance filed with the State Bar of Texas;” “including the requirement under Section 2, for the chief disciplinary counsel to dismiss grievance as an inquiry and refer each inquiry classified under 73 (a) (2) (A) or (B) and dismissed under this section to voluntary mediation and dispute resolution procedure established under Section 81.072 (e)”); 2023 H.B. 4518 (“relating to the authority of a court to grant a commutation of punishment to certain individuals serving a term of imprisonment and to victims’ rights regarding a motion to grant a commutation.” Including the asserting a victim’s right to request victim-offender mediation coordinated by the victim services division of the department); 2023 S.B. 1930 (relating to “policies and procedures regarding children placed by the Department of Family and Protective Services in a residential treatment center or qualified residential treatment program”); 2023 H.B. 993 (“relating to sheriff’s department civil service systems in certain counties;” including a provision outlining the procedure in which the commission will select a mutual arbitrator when employee and sheriff cannot agree on the selection of the hearing examiner on or within 10 days of when the appeal is filed); 2023 H.B. 1499 (the duties of court-appointed guardians ad litem, attorneys ad litem, and amicus attorneys in certain suits affecting the parent-child relationship); 2023 H.B. 1353 (Deputy sheriff civil service appeals of certain sheriff’s department actions; including a provision that states that “if a deputy and the sheriff do not agree on the selection of a hearing examiner before the 11th day after the date is filed, the commission shall request a list of seven qualified arbitrators from the American Arbitration Association or Federal Mediation and Concuklin Services, or their successor in function”); 2023 H.J.R. 84/S.J.R. 30 (constitutional amendment authorizing relating to actions of the Kickapoo Traditional Tribe of Texas such as

gambling; and if parties are unable to resolve a dispute under the process specified in Part XII of the bill, either party can call for a mediation); 2023 H.B. 2541 (relating to policies and procedures regarding children placed by the Department of Family and Protective Services in a residential treatment center or program); 2023 S.B. 736 (mandatory arbitration for certain municipal fire departments and employee bargaining agents); 2023 H.B. 5010 (mandatory arbitration for certain municipal fire departments and employee bargaining agents); 2023 S.B. 1298 (requests for arbitration of certain billing disputes between health benefit plan issuers or administrators and out-of-network facilities); 2023 S.B. 2476 (consumer protections against certain medical and health care billing by emergency medical services providers; specifically, provide that information on the availability of mediation or arbitration should be included in a Balance Billing Prohibition Notice); 2023 H.B. 2671 (the postponement of a hearing for a temporary order in certain family law cases referred to mediation); 2023 H.B. 3478 (mediation of certain fee disputes between towing companies and motor carriers).

*Utah**

Bills Enacted: 2023 H.B. 68 (States that where there is no agreement between the board of trustees of the local district and the contact sponsor on the amount of expense, either party may submit the matter to a binding arbitration); 2023 S.B. 43 (outlines procedure by which commissioner may establish alternative dispute resolution processes); 2023 S.B. 64 (shifts responsibilities regarding emergency medical services from the Department of Health and Human Services to the Department of Public Safety and requires the Commission to promulgate a rule provided for both mediation and binding dispute resolution for disputes (between states) as appropriate); 2023 H.B. 388 (governs arbitration procedure in relation to personal injury and the time limitations of which a claim may be brought); 2023 H.B. 67 (permits courts to modify a joint custody judgment where the parents have complied in good faith with the dispute resolution procedure, but requires the court to order dispute resolution where it was not in the order that established the joint custody, has not been used already, and a modification is sought); 2023 H.B. 232 (outlines the Public Service Commission's "jurisdiction over dispute resolution between a highway authority and railroad"); 2023 H.B. 245 (governs arbitration procedure in relation to uninsured motorist claims); 2023 H.B. 357 (allows a decentralized autonomous organization that has not registered as a for-profit entity to be treated as the legal equivalent of a domestic limited company, specifically can describe or provide a type of dispute resolution mechanism outlined in the bill); 2023 S.B. 207 (clarifies that the bill does not limit the ability of an insurer to: "enter into a mutual agreement to resolve

alleged violations of the provisions in this section through mediation or binding arbitration”); 2023 S.B. 35 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Interstate Teacher Mobility Compact and the PA Licensure Compact); 2023 H.B. 251 (states that “in winding up a partnership, limited partnership, or limited liability company’s activities and affairs, the partnership may settle disputes by mediation or arbitration”); 2023 H.B. 304 (“for a nonjudicial adjustment, the juvenile probation officer may require the minor to attend victim-offender mediation if requested by the victim,” as well as a number of other listed activities); 2023 S.B. 209 (outlines the exceptions to mediation privilege); 2023 S.B. 186 (amends provisions related to Juvenile Court. Includes a provision that states that “if the minor and the victim of the adjudicated offences agree to participate the juvenile court may refer the minor’s case to a restorative justice program, such as victim offender mediation”); 2023 S.B. 61 (enacts provisions related to railroads, fencing of railroad rights-of-way, and liability for damage to livestock. Includes the requirements that the department participates in the United States Department of Agriculture certifies agricultural mediation program); 2023 S.B. 76 (addresses coordination of planning related to water. Includes provision stating that “the court shall refer the parties to mediation unless both parties decline to participate in mediation”); 2023 H.B. 400 (adds availability to truancy mediation, if available); 2023 S.B. 206 (outlines the abilities of the mediators in custody cases and the rules/procedures of mediations); 2023 H.B. 150 (outlines the availability and procedure of mediation or arbitration in cases relating to water shortages).

Bills Pending: None.

*Vermont**

Bills Enacted: 2023 S. 95 (Relates to banking and insurance; states when disputes are resolved by arbitration); 2023 S. 99 (establishes procedure and rules of New Motor Vehicle Arbitration); 2023 H. 227 (Vermont Uniform Power of Attorney Act; allows agent to seek, participate, and settle through dispute resolution); 2023 S. 100 (provides that “the office shall employ resource specialists who shall assess landlords and tenants for availability and eligibility for statewide or local assistance for voluntary mediation”); 2023 S. 112 (Public Utility Commission policies and procedures; outlines when facilitation/mediation can be sought); 2023 H. 86 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Counseling Compact); 2023 H. 82 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Counseling

Compact); 2023 H. 62 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Counseling Compact); 2023 H. 77 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Physical Therapy Licensure Compact).

Bills Pending: 2023 H. 330 (new motor vehicle arbitration); 2023 S. 144 (relates to school communication and procedures; includes alternative dispute resolution encouragement); 2023 H. 391 (Eviction Diversion Program participation requires that the landlord and tenant participate in mediation or other appropriate methods of dispute resolution determined by the Program Coordinator); 2023 H. 247 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Occupational Therapy Licensure Compact); 2023 S. 76 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Speech-Language Pathology Interstate Compact).

*Virginia**

Bills Enacted: 2023 S.B. 1513 (Provides that the Executive Council shall have the power to provide for the public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purpose of the CSA); 2023 H.B. 1433/ 2023 S.B. 802 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Counseling Compact); 2023 H.B. 2033 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Audiology and Speech-Language Pathology Interstate Compact); 2023 H.B. 1598 / 2023 S.B. 788 (Medical Cannabis Program; the decision to use mediation or a dispute resolution proceeding is at the Board's sole discretion and shall not be subject to judicial review); 2023 S.B. 1086 ("living organ donors; unpaid leave, civil penalty;" outlines the means by which the commissioner shall investigate and resolve a complaint--including mediation); 2023 H.B. 1581 (states that, "whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program").

Bills Pending: None.

*Washington**

Bills Enacted: 2023 H.B. 1243 (Concerning municipal airport commissions; outlines the procedure for choosing arbitrator where parties cannot agree upon rentals); 2023 H.B. 1008 (concerning the Uniform Family Law Arbitration Act); 2023 S.B. 5499 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Multistate Nurse Licensure Compact); 2023 S.B. 5197 (addressing landlord-tenant relations; outlines what must be included in a 14-day notice, such as the opportunity of low-cost mediation and the availability of dispute resolution center throughout the state); 2023 S.B. 5198 (procedure and rights in the sale or lease of manufactured/mobile home communities and the property on which they sit; outlines mediation procedure); 2023 H.B. 1636 (outlines various foreclosure protections for homeowners in common interest communities; first notice of delinquency must notifies the homeowner of the option to seek mediation); 2023 H.B. 1792 (amending procedural actions in a water rights adjudication. States the appropriate times and procedures for dispute resolution); 2023 H.B. 1349 (foreclosure protections; outlines the procedures by which a borrower may be referred to mediation).

Bills Pending: 2023 H.B. 1666 (describes when a licensee or employee may not bring a claim in arbitration relating to fee and debt collection practices); 2023 H.B. 1307 (concerning collective bargaining for resident and fellow physicians employed by certain institutions of higher education; outlines procedure of arbitration panel); 2023 H.B. 1429 (prohibiting strikes by employees covered by the Educational Employment Relations Act and authorizing interest arbitration); 2023 S.B. 5219 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Interstate Counseling Compact for Licensed Mental Health Counselors); 2023 H.B. 1437 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Interstate Massage Compact); 2023 S.B. 5021 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Audiology and Speech-language Pathology Compact); 2023 H.B. 1417 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Multistate Nurse Licensure Compact); 2023 S.B. 5205 (places limitation decision making and dispute resolution where it is found that a parent has engaged in listed types of conduct); 2023 S.B. 5727 (outlines protections for consumers engaging with common interest communities; requires the notice of delinquency mention the possibility of a mediation referral from an attorney); 2023 H.B. 1591 (Open Adoption Agreements; requires

the administrative courts engage with a broad group of stakeholder groups and discuss the development of a trauma-informed mediation process that is available throughout the state); 2023 H.B. 1181 (Climate Change Response; states that “the department is required provide mediation services to resolve disputes between countries and cities regarding, among other things, coordination of regional issues and designation of urban growth areas”); 2023 H.B. 1842 (“salary comparisons for ferry system collective bargaining units;” outlines the procedure by which an arbitrator may be chosen if the parties cannot successfully negotiate a comprehensive collective bargaining agreement); 2023 H.B. 1190 (concerning environmental leadership through outdoor recreation and climate adaptation investments; outlines procedure of formal mediation).

*West Virginia**

Bills Enacted: 2023 H.B. 461 (public employees grievance procedure requiring that before bringing a suit a party shall serve a written demand for mediation upon the offending party and outlines procedure).

Bills Pending: None.

*Wisconsin**

Bills Enacted: None.

Bills Pending: 2023 A.B. 207/ S.B. 196 (Requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Counseling Compact); 2023 A.B. 208/ A.B. 197 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Audiology and Speech-Language Pathology Compact); 2023 A.B. 225 (“recreational vehicle manufacturers, distributors, and dealers, the definition of recreational vehicles, and providing a penalty;” requires that before bringing a suit a party shall serve a written demand for mediation upon the offending party and outlines procedure); 2023 A.B. 230 (“recreational vehicle manufacturers, distributors, and dealers, the definition of recreational vehicles, and providing a penalty;” requires that before bringing a suit a party shall serve a written demand for mediation upon the offending party and outlines procedure).

*Wyoming**

Bills Enacted: 2023 S.F. 174 (Charter school authorizing board; States that “the application process may provide a process for mediation of disputes concerning the completeness of an application between the

No. 1]

Legislative Update

265

applicant and authorizer”); 2023 H.B. 52 (States that “the application process may provide a process for mediation of disputes concerning the completeness of an application between the applicant and authorizer”); 2023 S.F. 26 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Psychology Inter-jurisdictional Compact); 2023 S.F. 10 (requires rules to be implemented by the Commission regarding mediation and binding dispute resolution between states relating to the Licensed Professional Counselor Compact).

Bills Pending: None.