

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

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# 2003 Texas ADR Legislative Report

Center for Public Policy Dispute Resolution

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**Center for Public Policy Dispute Resolution**

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## ACKNOWLEDGMENTS

The 2003 Texas ADR Legislative Report is the cumulative effort of the staff and student interns of the Center for Public Policy Dispute Resolution at The University of Texas School of Law. During the legislative session, Susan Schultz, Deputy Director, supervised student interns: **Amy Agnew** and **Dustin Rynders**, who tracked and analyzed over 160 pieces of legislation, with assistance from **Amber Latino** and **Kennon Peterson** on water law bills.

During the summer, **Amanda Wilkins** became our legislative intern, updating bill summaries, tracking last actions on bills, and organizing the report. Under the direction of **Jan Summer**, Executive Director, **Susan Schultz** wrote the Executive Summary and along with **Tracy Tarver**, Program Director, edited the report, with the assistance of **Margaret Menicucci**, Program Director and Natural Resource Specialist. **Vicki Read**, Administrative Associate, and **Natalie Gray**, Administrative Assistant, prepared the final draft and ensured its timely publication.

The Center is also grateful to its many friends and supporters for the tremendous, collaborative effort that it takes to stay informed during a legislative session.

## EXECUTIVE SUMMARY

During the regular session of the 78<sup>th</sup> Legislature, the Center tracked over 160 filed bills considered to have potential impact on alternative dispute resolution (ADR). As addressed below, 60 of those filed bills were Sunset bills (including companion bills), which the Center tracked because of the new ADR provision adopted by the Sunset Advisory Commission and included in most Sunset bills. Of the remaining tracked bills, this report summarizes 21 bills that retained ADR implications and acquired the Governor's signature. Some notable ADR bills that were not passed are also briefly summarized.

Overall, 5,592 bills were filed during the regular session, 1,383 were passed, and 48 were vetoed. In the end, 24% of the filed bills became law. The number of bills filed and passed during the regular session is remarkable considering how much time the Legislature expended on the state budget. The state faced a reported \$9.9 billion shortfall, and the Governor in his "State of the State" address proclaimed that the budget should nevertheless be balanced without raising taxes. Agencies and institutions dependent on legislative appropriations had to cut their budgets, not only for the next biennium but also for current year expenditures. The actual impact of the final appropriations bill is still under review and will likely take months, if not years, to decipher. The reported drastic change in health and human services programs includes a reorganization of the health and human services agencies with a transition plan to be filed in December 2003.

From an ADR perspective, a notable first is the inclusion of ADR provisions in state agencies' Sunset bills. In November 2002, the Sunset Advisory Commission adopted a new across-the-board recommendation that directs state agencies to develop and implement ADR processes. This new recommendation supports and is consistent with the underlying state policy on the use of ADR by governmental bodies, as stated in the Governmental Dispute Resolution Act (Chapter 2009, GOV'T CODE). In the following "Featured Legislation" section, we discuss the Sunset agencies that now have ADR provisions in their regulations and what the next step to implementation might be.

Regarding the other summarized bills, ADR language is found in legislation addressing codes that range from agriculture to workers compensation. Given the extreme time pressure towards the end of the regular session, the bills with ADR provisions that finally passed are a pell-mell assortment. Dispute resolution was mentioned in some of the most controversial bills, namely homeowners insurance (SB 14) and tort reform (HB 4). Earlier versions of these bills had stronger ADR language. Nevertheless, the signed version of HB 4 warns patients about arbitration clauses. It prescribes explicit notice requirements in any agreement between a patient and a health care provider to arbitrate a health care liability claim. Most notably, such an arbitration agreement must state that the agreement is invalid and of no legal effect under Texas law unless it is also signed by an attorney of the patient's choosing. All affected parties also need to pay close attention to a bill that survived many changes to enact the Texas Residential Construction Commission Act (HB 730). This bill establishes, among other

things, an administrative process for the resolution of residential “construction defects.” However, the dispute resolution mechanism is not an ADR process but rather an inspection and recommendation process: the inspector or a panel appointed by the Commission will make the final determination on the homeowner’s complaint. At that point, the homeowner may pursue other legal remedies, including any arbitration that may be required under the construction contract. This new act is full of deadlines that must be met or rights may be waived.

The concept of binding arbitration that continues to cause concern in consumer contracts spread this session to municipal government. Two bills (HB 1204 re: regulation of subdivisions in the extra-territorial jurisdiction; and SB 905 re: compensation for the annexation of emergency service districts) require disputing parties, i.e., municipalities and counties or municipalities and emergency service districts, to enter into binding arbitration if they cannot negotiate an agreement.

As to the bills that did not pass, the local Dispute Resolution Centers (DRCs) around Texas mounted a valiant effort to raise their funding cap from \$10 per civil court case to \$15 only to see their bill die first in Senate committee and then again on the Senate floor, where it was revived briefly as an amendment. The DRCs represent an affordable and accessible ADR resource in their communities and need financial support to keep up with the growing need and demand for ADR. Another bill that died in committee was one on which the Center worked with the Texas Association of Groundwater Districts and Fellows Representative Robby Cook and Senator Robert Duncan. This bill would have added a Water Code provision giving groundwater conservation districts clear authority to refer cases to mediation. The districts’ authority to do so is currently under the Governmental Dispute Resolution Act.

Perhaps the lesson to be gleaned from this legislative session is a recurring one: the need for a better understanding of ADR processes and their applications persists. Based on the ADR terms that appeared in bills, much confusion remains even between “mediation” and “arbitration.” The Center looks forward to the continuing challenge of training and educating people on how dispute resolution does and can fit in the governmental arena.

## **FEATURED LEGISLATION: NEW ADR POLICY FOR SUNSET AGENCIES**

In support of and consistent with the state policy on the use of alternative dispute resolution (ADR) in Texas government, the Texas Sunset Advisory Commission adopted an across-the-board (ATB) recommendation in 2002 that directs state agencies to develop and use ADR processes.

Generally, the Commission adopts ATBs that contain “good government” standards for state agencies. Building on provisions and principles in the Negotiated Rulemaking Act and the Governmental Dispute Resolution Act (Chapters 2008 and 2009, GOV’T CODE), the ATB directs agencies to develop a plan for the appropriate use of negotiated rulemaking and ADR processes for internal and external disputes, such as employee grievances, inter-agency conflicts, contract disputes, and actual or potential contested matters.

***It is the policy of this state that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body’s operations and programs.***

Governmental Dispute Resolution Act (Chapter 2009, GOV’T CODE)

When the ATB is applied in full to an agency, the language in the Sunset bill takes the following form:

- ( ) The (*polycymaking body*) shall develop and implement a policy to encourage the use of:
  - (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of (*agency*) rules; and
  - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the (*agency’s*) jurisdiction.
  
- ( ) The (*agency’s*) procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
  
- ( ) The (*polycymaking body*) shall designate a trained person to:
  - (1) coordinate the implementation of the policy adopted under Subsection (the first subsection cited above in this ATB);
  - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
  - (3) collect data concerning the effectiveness of those procedures, as implemented by the (*agency*).

After considering the Sunset bills, the Legislature continued twenty-two agencies and two individual programs. Of those, eighteen agencies now have all or part of the ATB language in their statute prescribing ADR use. Additionally, the Legislature placed the ADR provisions in the enabling statute of one new agency, the Texas Military Preparedness Commission, as well as in the provisions of the newly reorganized Health and Human Services Commission. A list of agencies that now have all or part of the ATB language in their statute is found in Appendix 1.

The adoption of the ATB and the inclusion of the ADR language in Sunset legislation represent a major step toward ADR implementation in state government. The impetus now shifts to training and ADR design. Significant resources are available. For example:

- a few state agencies have already implemented some ADR programs, including negotiated rulemaking procedures;
- the State Office of Administrative Hearings (SOAH) has published ADR model guidelines on its website as a template for agencies establishing or expanding ADR procedures; and
- the Center will be offering orientation sessions to familiarize state agencies with ADR and ADR programs; seeking helpful ADR information and experiences from other states and the federal government; and offering membership in a roundtable for agency ADR Coordinators

Designating an ADR coordinator within the agency will bolster the leadership and coordination of ADR implementation. The federal government's designation of ADR coordinators has been a very successful intra- and inter-agency resource. To have designated ADR coordinators at the state level will likely be an equally useful resource. State ADR coordinators will serve as the central contact for ADR programs, training, and evaluation. Helpful information on the selection of ADR coordinators is available. In particular, the Policy Consensus, Inc. has good insights on ADR coordinator selection on its website, which can also be accessed through a link on SOAH's and the Center's websites.

### **Selecting an ADR Coordinator**

Characteristics to consider:

- Good communication and leadership skills
- Thorough knowledge of the agency, its programs, policies and organizational culture<sup>1</sup>
- Enthusiasm for learning about ADR processes and for playing a "champion" role
- Access/connection to the agency head, policymaking body, or key leaders
- Adequate time to carry out the ADR Coordinator's responsibilities

Roles of the Coordinator may include:

- Coordinating resources
- Collecting data
- Developing and implementing plans and programs
- Providing training
- Managing, tracking, and evaluating program activities
- Providing ADR services (i.e., acting as a neutral)<sup>2</sup>

Functions typically include:

- Providing leadership and encouragement for integrating conflict resolution processes into agency practices
- Engaging key agency people in developing ADR policies and programs
- Planning, developing, and implementing new ADR processes and training
- Serving as in-house resource to build agency's understanding and capacity
- Assisting in locating resources for ADR, including trainers and neutrals
- Addressing barriers affecting ADR use, and identifying realistic incentives

Finally, the ATB's provision that agencies collect data on ADR programs will foster credibility and stability. The Governmental Dispute Resolution Act specifies that state agencies may share information with the Center and other governmental bodies on the progress of ADR programs. The Center expects to track and analyze the way agencies are using ADR and to assist agencies in developing meaningful evaluation mechanisms. Evaluating ADR programs in state agencies will be critical to identifying benefits and efficiencies as well as challenges or obstacles to implementation. The sharing of information will support ADR Coordinators and agencies as they engage in this collaborative process.

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<sup>1</sup> The ADR Coordinator should be in a location within the agency that will allow broad, meaningful support in developing and effectuating an ADR policy to cover the full range of regulatory, policy making, procurement and contracts, workplace, and other internal and external conflicts that may arise.

<sup>2</sup> If the ADR coordinator serves as a resource person and service provider, it is important to identify any potential conflict of interests.

## **Appendix 1 - Sunset Bills**

### **Agencies with full ADR ATB language:**

- HB 1218 - Texas State Board of Public Accountancy
- SB 652 - Texas Aerospace Commission (abolished; responsibilities transferred to the new Office of Economic Development and Tourism under the Governor's office)
- SB 283 - Texas Board of Architectural Examiners
- SB 263 - State Board of Dental Examiners
- SB 275 - Texas Department of Economic Development (abolished; responsibilities transferred to the new Office of Economic Development and Tourism under the Governor's office)
- SB 277 - Texas Board of Professional Engineers
- HB 1606 - Texas Ethics Commission
- HB 1538 - Texas Funeral Service Commission
- SB 286 - Texas Higher Education Coordinating Board
- SB 264 - Texas Department of Housing and Community Affairs
- SB 285 - Texas Department of Human Services (to be reorganized under the Health and Human Services Commission per HB 2292)
- SB 260 - Texas Board of Professional Land Surveying
- SB 279 - Texas Department of Licensing and Regulation
- SB 282 - Texas State Board of Plumbing Examiners
- SB 276 - Board of Tax Professional Examiners
- SB 280 - Texas Workforce Commission

### **Agencies with part of the ADR language:**

- SB 261 - Texas Council on Purchasing from People with Disabilities
- SB 273 - Court Reporters Certification Board
- SB 1147 - State Office of Administrative Hearings

### **Agencies for which Sunset was extended until 2005:**

- HB 2455 - State Board for Educator Certification
- HB 2455 - Texas Lottery Commission

## **NOTABLE ADR LEGISLATION PASSED BY THE 78<sup>TH</sup> LEGISLATURE**

### AGRICULTURE

**>>H.B. 1398** by Rep. Swinford  
Agriculture Code, Chapter 64  
*Relating to procedures for arbitration of seed performance disputes*

#### ***Bill Summary:***

In 1989, the Texas Legislature passed the Texas Seed Arbitration Act for the purpose of providing an unbiased third party investigation of seed performance complaints filed with the Department of Agriculture. In 2001, the Texas Supreme Court ruled that the Act's timing requirement was not mandatory, citing the lack of penalties for noncompliance as one of the reasons for its decision. The court argued that the Act's language and purpose did not clearly designate a mandatory timing requirement. A lack of a mandatory time period for filing claims results in claims filed months after actual seed performance can reasonably be ascertained. House Bill 1398 establishes a 10-day time period for filing claims against seed manufacturers or distributors. The bill also authorizes the arbitration board to dismiss a claim if it is not filed within the time period.

#### ***ADR Provision:***

Section 1 of the bill amends Section 64.002, Agriculture Code, to specify that a purchaser has 10 days after the date on which the purchaser discovered or reasonably should have discovered the defect in seed performance to submit the claim to arbitration.

Section 2 of the bill amends Section 64.004, Agriculture Code, regarding the effects of an arbitration in a subsequent litigation of a seed performance complaint. The Court may no longer consider as relevant any finding in an arbitration report concerning the effect of delay in filing the arbitration claim.

Section 3 of the bill amends Section 64.006, Agriculture Code, to conform to the 10-day time limit provision. This section deletes the requirement that seed performance dispute complaints must be filed within enough time to permit effective inspection of the plants under field conditions.

Section 4 of the bill adds Section 64.0065, Agriculture Code, regarding the effects of noncompliance. The arbitration board is permitted to dismiss a purchaser's submission of a claim to arbitration if the purchaser fails to submit the claim to arbitration within the 10-day time period.

## ALCOHOLIC BEVERAGES

**>>S.B. 1380** by Sen. Armbrister

Alcoholic Beverages Code, Chapter 108

*Relating to alcoholic beverage industry sponsorship and alcoholic beverage sale and consumption at public entertainment facilities*

### **Bill Summary:**

Under current Texas Alcoholic Beverage Commission (TABC) rules, public entertainment facilities may allow alcoholic beverage manufacturers and wholesalers to advertise, promote, and sponsor events as long as only independent concessionaires sell and serve alcoholic beverages. Senate Bill 1380 codifies this current practice and creates the Industry Public Entertainment Facilities Act to regulate alcoholic beverage industry sponsorship, marketing, and promotion at public entertainment facilities.

### **ADR Provision:**

Section 1 of the bill adds Section 108.79, Alcoholic Beverages Code, to allow permittees or licensees to submit an advertising, promotional, sponsorship, or concessionaire agreement related to a public entertainment facility to the TABC administrator for preapproval. Should the administrator conditionally approve or disapprove this agreement, the permittee or licensee is authorized to contest the TABC's or the administrator's determinations, acts, or omissions and to engage in informal mediation to resolve the dispute.

## BUSINESS AND COMMERCE

**>>S.B. 473** by Sen. Ellis

Business and Commerce Code, Chapter 20

*Relating to the detection and prevention of identity theft*

### **Bill Summary:**

Identity theft is one of the fastest growing crimes in this country. It is also a serious problem in Texas, as the recent theft of 55,000 University of Texas student social security numbers helped to rank Texas fifth on the FTC's list of identity theft per capita. Under current law, consumer credit reporting agencies allow consumers to place security alerts on their credit reports; however, these alerts are merely advisory and do not have to be followed by credit grantors and merchants. Senate Bill 473 requires consumer credit reporting agencies to place a security freeze on a consumer's file at the request of any consumer who has provided a valid police report or complaint. The bill also provides for the confidentiality of social security numbers.

**ADR Provision:**

Section 2 of the bill amends Section 20.03, Business and Commerce Code, regarding written disclosures that consumer credit reporting agencies give to consumers. In disclosures to consumers, consumer credit reporting agencies are required to include a written statement that clearly and simply explains the consumer's rights, including dispute procedures and any right to arbitrate a dispute.

>>**H.B. 1282** by Rep. McCall  
Business and Commerce Code, Chapter 46

**Bill Summary:**

Unsolicited commercial electronic mail, more popularly referred to as "spam," is a huge headache for many Internet users. The research firm IDC estimates that the number of spam entries increased by 85% over the last year to almost 5 trillion entries. Time Magazine reports that the time spent fighting or deleting spam costs U.S. industry approximately \$8.9 billion a year in lost productivity. House Bill 1282 takes a step toward fighting spam by providing a legal option for consumers and industry to challenge individuals who initiate unsolicited commercial email messages.

**ADR Provision:**

Section 1 of the bill adds Section 46.010, Business and Commerce Code, to authorize the blocking of commercial email messages by email service providers. Service providers are allowed to block the receipt or transmission of messages reasonably considered to be spam messages if the provider offers a dispute resolution process for the prompt, good faith resolution of disputes related to the blocking. Also, for the purpose of dispute resolution, the provider is to make its contact information publicly accessible on its Internet website.

Section 1 of the bill also adds Section 46.011, Business and Commerce Code, relating to qualified immunity for telecommunications utilities. Email service providers that offer the dispute resolution process are immune from liability for the blocking of messages that the provider reasonably believes to be unsolicited commercial email messages.

>>**H.B. 1156** by Rep. Giddings  
Business Organization Code,  
*Omnibus recodification and adoption of the Business Organization Code*

**Bill Summary:**

Texas law mandates that statutes be occasionally revised and reorganized into codes in order to make the law more transparent and understandable. The codification process helps to clarify and update existing laws and to prepare for future expansions. Prior to the 2003 legislative session, Texas did not have a code that primarily regulated for-profit, non-profit, and private sector businesses and corporations. Several statutes regulating these entities had been enacted but had not been consolidated into one code. The Business Organizations Code codifies current for-profit, non-profit, and

private sector statutes. The code, a joint project of the State Bar's Business Law Section and the Secretary of State, was introduced in both the 1999 and 2001 legislative sessions but did not pass. House Bill 1156 creates the Texas Business Organizations Code. Although the bill primarily reorganizes and revises existing laws, it also contains substantive changes, including revisions to filing fees and procedures and registration for foreign entities conducting business in Texas. The bill takes effect January 1, 2006.

**ADR Provision:**

The bill includes two new provisions with ADR terms: In Chapter 8, dealing with Indemnification and Insurance, the definition of "judgment" is added and states that it "includes an arbitration award." In Chapter 21, dealing with For-Profit Corporations, Section 21.714(b) lists what the shareholders of a close corporation may include in a shareholders' agreement. An agreement may provide for the "arbitration or mediation" of issues upon which shareholders or directors may become deadlocked, and the shareholders are unable to break the deadlock.

CIVIL PRACTICE AND REMEDIES

>>**H.B. 4** by Rep. Nixon

Civil Practice and Remedies Code, Chapter 42

*Medical malpractice and tort liability revisions*

**Bill Summary:**

The 2003 Texas Legislature wrestled with some of the most hotly contested and divisive issues in recent session history when it enacted House Bill 4, the comprehensive revision of medical malpractice and tort liability. The most notable and publicized aspect of the bill is the imposition of a cap on non-economic damages in medical malpractice suits. Among other things, the bill also modifies settlement offers, proportionate responsibility in civil cases, and the liability of public servants and public school employees, and governs the awarding of attorney's fees in class actions.

**ADR Provisions:**

Several disjointed references to ADR terms appeared in the bill:

Section 10.01 of the bill adds Subchapter J, Civil Practices and Remedies Code, regarding arbitration agreements. Health care providers are prohibited from requiring or requesting patients or prospective patients to agree to arbitrate health care liability claims unless the agreement contains the written notice prescribed in the bill. The notice must contain statements that the agreement is invalid if not also signed by an attorney; that the agreement contains a waiver of important legal rights; and that one should consult an attorney before signing. This section also specifies enforcement provisions and sanctions for physicians and other health care providers who violate the arbitration agreement provisions and for first time violators.

Section 15.01 of the bill adds Section 22.0516, Education Code, regarding alternative dispute resolution of cases involving school district professional employees. Courts in which judicial proceedings are brought against a professional school district employee are authorized to refer the case to an alternative dispute resolution procedure as described in Chapter 154, Civil Practice and Remedies Code – simply making explicit the authority the Court already has under Chapter 154.

Finally, section 2.01 of the bill adds Chapter 42, Civil Practices and Remedies Code, regarding settlement offers. While this section does not add or modify an ADR process per se, dispute resolution practitioners need to be aware of the potential change in settlement incentives and any affect that this new chapter may have on negotiations and confidentiality during an ADR procedure. The section encourages the early resolution of lawsuits by shifting the burden of litigation costs to the party who rejects a settlement offer when the judgment to be rendered will be “significantly less favorable” to that rejecting party. The section states that a judgment will be “significantly less favorable” to the rejecting party than the settlement offer if:

- a) the rejecting party is a claimant and the award will be less than 80% of the rejected offer; or
- b) the rejecting party is a defendant and the award will be more than 120% of the rejected offer.

In this instance, litigation costs include court costs, reasonable fees for up to two expert witnesses, and reasonable attorney’s fees, with certain limitations. Only a defendant may trigger this settlement procedure by filing a declaration that the procedure is available in the action. The new section only applies to cases filed on or after January 1, 2004, and certain types of cases are excluded from applicability. The Texas Supreme Court is required to promulgate rules by January 1, 2004 to implement the new settlement offer provisions.

## EDUCATION

>>**H.B. 1024** by Rep. Crownover

Education Code, Chapter 21

*Relating to staff development requirements in public schools*

### **Bill Summary:**

Texas school districts only have seven days during the 10-month contract period for teachers to conduct staff development and must divide their time among a minimum of five state mandated areas. State mandates regarding public school district staff development often restrict the ability of a local school district to tailor development programs to meet the particular needs of its staff members. House Bill 1024 removes state authority over the content, activities, and methods of school district staff development and provides school districts with the discretion to establish staff development standards and programs.

**ADR Provision:**

Section 1 of the bill amends Section 21.451, Education Code, regarding public school staff development guidelines. The language mandating specific staff development topics is deleted and replaced by permissive language on what staff development may include, including training in conflict resolution.

**>>S.B. 930** by Sen. Shapiro  
Education Code, Chapter 22

*Relating to the limitation of liability for professional employees of school districts*

**Bill Summary:**

The U.S. Department of Education recently reported that fear of being sued is one of the top three concerns among teachers. While current law shelters teachers, principals, and other employees from a wide range of personal liabilities, certain professional school district employees, including substitute teachers, are not afforded the same protections. Senate Bill 930 now extends immunity from liability to a broader array of employees by amending the definition of “professional employee of a school district.” The array now includes substitute teachers, teachers employed by a company that contracts with a school district to provide teacher services, and board of trustees members in independent school districts. The bill also shields professional school district employees from liability who use reasonable force to maintain discipline and order, caps liability for acts within the scope of duty at \$100,000, requires the exhaustion of all administrative remedies before filing suit against a professional school district employee, and allows the employee to recover attorney’s fees if the employee prevails in a suit.

**ADR Provision:**

Section 1 of the bill adds Section 22.0516, Education Code, regarding the referral of cases to alternative dispute resolution. Under this new provision, courts are allowed to refer a case against a professional employee of a school district to alternative dispute resolution – again making explicit the Court’s existing authority under Chapter 154, Civil Practice and Remedies Code.

FAMILY

**>>H.B. 1815** by Rep. Goodman  
Family Code, Chapter 107

*Relating to court-ordered representation in suits affecting the parent-child relationship*

**Bill Summary:**

The current appointment process in suits affecting the parent-child relationship often causes confusion for attorneys and judges. Multiple individuals can be appointed to a single case and lawyers and laypeople can fulfill the role of guardian *ad litem*. House Bill 1815 defines the roles of attorney *ad litem* and guardian *ad litem* and specifies the different rules that apply to appointees depending on the type of suit for which the appointment is being made. Attorneys cannot be appointed as guardian *ad litem*s

unless they are appointed in a dual role as both attorney *ad litem* and guardian *ad litem* for a child in a suit filed by a governmental entity. The bill creates a new appointment, *amicus* attorney, to be appointed in private custody suits for the purpose of providing legal services to the court in protecting a child's best interests and describes the powers and duties of an *amicus* attorney. The bill also amends provisions for appointments in suits by a governmental entity, appointments in private custody suits, and appointments of volunteer advocates.

**ADR Provision:**

Section 1 amends in part Section 107.002, Family Code, dealing with powers and duties of guardian *ad litem*s. The amendment adds a duty for the guardian *ad litem* to "encourage settlement and the use of alternative forms of dispute resolution." Section 1 also adds Section 107.003, Family Code, regarding the powers and duties of attorney *ad litem*s and *amicus* attorneys appointed in suits affecting the parent-child relationship. Similarly, among their required duties, attorney *ad litem*s appointed to represent a child and *amicus* attorneys appointed to assist the court shall "encourage settlement and the use of alternative forms of dispute resolution."

**>>H.B. 1536** by Rep. Reyna

Family Code, Chapter 161

*Relating to certain communication with and access to a child following termination of the parent-child relationship*

**Bill Summary:**

Under current law, the court-ordered termination of a parent-child relationship divests the parent and child of all legal rights and duties with respect to one another, except that the child retains inheritance rights unless otherwise provided by the court. House Bill 1536 authorizes courts, when in the best interest of the child, to provide limited post-termination contact between children and biological parents who voluntarily relinquish parental rights.

**ADR Provision:**

Section 2 of the bill adds Section 161.2061, Family Code, regarding limited post-termination contact between a parent and child. The section provides in part that before the terms of an order for limited post-termination contact will be enforced, the party seeking the enforcement must plead and prove that a good faith effort was made to resolve the disputed matters through mediation. Proving "good faith," however, remains a problem in ADR cases.

**>>H.B. 884** by Rep. Dutton

Family Code, Chapters 6 and 102

*Relating to alternative dispute resolution statements required in a suit for dissolution of a marriage and a suit affecting the parent-child relationship*

**Bill Summary:**

Current law requires that the first pleadings filed in a suit for dissolution of marriage or in a suit affecting the parent-child relationship include a statement signed by the party

filing the pleading that he or she is aware that ADR is available. Mediation is used extensively in the area of family law and many Texas counties make mediation mandatory. Arguments were made that the prevalence of mediation makes the statement unnecessary and possibly caused an additional trip to the lawyer's office before suit could be filed.

**ADR Provision:**

Section 1 of the bill repeals Sections 6.404 and 102.0085, Family Code, regarding alternative dispute resolution statements in certain family law cases. The bill repeals the requirement that a statement on ADR be included in suits for dissolution of marriage and in suits affecting the parent-child relationship.

GOVERNMENT

>>**H.B. 599** by Rep. Chisum

Government Code, Chapter 81

*Relating to the continuation and functions of the State Bar of Texas and to conflicts of interest with respect to certain persons engaged in the practice of law*

**Bill Summary:**

This is the Sunset bill for the State Bar of Texas, which is continued until 2015. The State Bar is a quasi-governmental agency of the judicial branch that sets and enforces standards of professional conduct for attorneys. The bill amends various provisions, including the addition of an executive committee, the setting of a mandatory fee for legal services to the poor, and the refining of grievance procedures.

**ADR provisions:**

Section 16 of the bill amends Section 81.072 of the Government Code concerning disciplinary and disability procedures. In particular, the State Bar's voluntary mediation and dispute resolution procedure is to be established not just as a model for resolving allegations of attorney misconduct but as a standard process

(1) to resolve each allegation that is:

- a. classified as an inquiry, because it does not constitute an offense cognizable under the Texas Disciplinary Rules of Professional Conduct; or
- b. classified as a complaint that is subsequently dismissed; and

(2) to facilitate coordination with other programs administered by the State Bar to resolve inquiries and complaints.

The new section also makes explicit that all types of information (hearing transcripts, statements . . . ) presented during the voluntary mediation and dispute resolution procedure are confidential to the same extent as if presented before a district grievance committee.

Section 17 amends Chapter 81 of the Government Code by adding, among others, Sections 81.074 and 81.075. These new sections address the disposition of inquiries

and complaints, respectively, and affirm the referral of each dismissed inquiry and complaint to the voluntary mediation and dispute resolution procedure.

**>>H.B. 2292** by Rep. Wohlgemuth

Government Code, Chapter 531

*Relating to state policy on the financing of certain health and human services programs*

**Bill Summary:**

Currently, twelve Texas agencies administer state health and human service programs. The agencies oversee a wide variety of programs, including Medicaid, the Children's Health Insurance Program, food stamps, eligibility determination for Social Security benefits, protective services for children, and licensing and regulation of many health care professions.

House Bill 2292 provides for a massive reorganization of these state agencies. From an organizational chart perspective, the bill consolidates the existing health and human service agencies into four departments under the authority of the Health and Human Services Commission, transfers certain functions to the Commission, and creates the Health and Human Services Council to assist the Commissioner of Health and Human Services in promulgating rules and policies. The bill also creates a council for each of the four departments. This is a very lengthy bill with major implications for health and human services.

**ADR Provision:**

Section 1.06 of the bill adds Section 531.061, Government Code, requiring the Health and Human Services Commission to adopt a policy to encourage the use of ADR. The ADR language in this section is identical to the ADR language placed in the Sunset bills (See Featured Legislation section). In sum, the Commission is to develop and implement an ADR policy for the Commission and for "each health and human services agency" that it governs to encourage the use of negotiated rulemaking and alternative dispute resolution procedures for internal and external disputes and to designate a trained person to assist in the ADR implementation.

**>>H.B. 1189** by Rep. Talton

Local Government Code, Chapter 143

*Relating to alternative dispute resolution procedures in certain police departments*

**Bill Summary:**

Under current law, a city with a population of 1.5 million or more can enter into meet-and-confer agreements with its police department. House Bill 1189 continues this policy of negotiating certain disputes regarding police officers by authorizing the head of the police department to develop and implement an ADR program to refer certain disputes to mediation.

**ADR Provision:**

Section 1 of the bill adds Section 143.135, Local Government Code, to authorize the heads of police departments in municipalities with a population of 1.5 million or more to develop and implement alternative dispute resolution programs to refer certain disputes involving police officers to mediation. The term “mediation” is defined by reference to Section 154.023, Civil Practices and Remedies Code. The bill specifies time limitations and deadlines for disputes referred to mediation.

The bill also provides for confidentiality of conduct and communications during the mediation and specifies that mediators are prohibited from testifying in proceedings concerning information relating to or arising out of the mediation. If the confidentiality provisions are in conflict with other legal requirements for disclosure of communications or materials, the issue of confidentiality can be presented to a district court to determine whether a protective order is warranted or whether the communications or materials are subject to disclosure. The ADR procedures under Chapter 154 of the Texas Civil Practices and Remedies Code and police department rules apply to these mediations unless they conflict with the new law. The confidentiality provisions in the Governmental Dispute Resolution Act (Chapter 2009, Gov'T CODE) apply to communications, records, conduct, and demeanor of the mediator and the parties, unless a conflict exists with this section.

**Note:**

Senator Gallegos, who sponsored an identical companion bill this session, had also filed an identical bill last session and a similar bill in the 76<sup>th</sup> Legislature.

**>>H.B. 1204** by Rep. Baxter

Local Government Code, Chapters 212, 232, and 242

*Relating to authority of municipalities and counties to regulate subdivisions and certain development in a municipality's extraterritorial jurisdiction and in the unincorporated area of a county*

**Bill Summary:**

In 2001, the Legislature enacted provisions to address overlapping development regulations by certain municipalities and counties for subdivisions in the extraterritorial jurisdiction (ETJ) of those municipalities. The legislation required counties and municipalities to enter into an agreement to determine governing regulations for subdivisions in those areas. House Bill 1204 reenacts and amends those provisions, setting forth further criteria for determining the applicability of the provisions. The new bill also requires certain counties and municipalities that cannot reach an agreement by a specified date to enter into binding arbitration.

**ADR Provisions:**

Section 4 of the bill amends Section 242.001, Local Government Code, to require applicable counties and municipalities that fail to agree by a specified date on which governmental entity will regulate the subdivision to enter into binding arbitration. This section also provides that if an arbitrator or arbitration panel has not reached a decision

within 60 days of selection, then the arbitrator or arbitrator panel shall issue an interim decision concerning the regulation of the subdivision. Effective until the arbitrator or the panel reaches a final decision, the interim decision shall specify a single set of regulations for plats and subdivisions and approval of related permits within the ETJ.

Section 5 of the bill adds Section 242.0015, Local Government Code, setting forth arbitration procedures for relevant counties and municipalities that fail to reach an agreement on subdivision regulations. Counties and municipalities must participate in an arbitration requested under this section, and the arbitration decision is made binding on the parties. The section provides for the selection of an arbitrator or arbitration panel and for the authority of the arbitrators in issuing decisions. The section states that each party is equally liable for arbitration costs and requires the arbitrators to make a good faith effort to reach a decision within 60 days after selection.

## HEALTH AND SAFETY

**>>S.B. 905** by Sen. Madla

Health and Safety Code, Chapters 775 and 776

*Relating to reimbursement for land removed from emergency service districts and dispute resolution relating to the amount of reimbursement*

### **Bill Summary:**

In 1987, Texas voters approved a constitutional amendment establishing and creating special districts for the provision of emergency services. Emergency service districts provide emergency medical services, emergency ambulance services, and rural fire prevention and control services. Swiftly growing Texas counties with emergency service districts face annexation of the district's territory by local cities. Current law requires municipalities to reimburse an emergency service district for the annexation of part of its territory only if the county has a population of 125,000 or more. Senate Bill 905 requires municipalities to reimburse districts in less populous counties for annexation of territory and provides a specific formula for calculating the amount of compensation. The bill requires cities and districts that cannot agree on the amount of compensation to settle the dispute in binding arbitration.

### **ADR Provisions:**

Section 2 of the bill adds Section 775.0221, Health and Safety Code, relating to arbitration regarding compensation for territory removed from an emergency service district. Under the new section, the municipality and the district shall negotiate an agreement on the amount of compensation for the annexed territory based on a calculation provided in the statute. If the municipality and district cannot reach an agreement, then they are to resolve the issue using binding arbitration. The section states that a request for binding arbitration must be in writing and may not be made until 60 days after the municipality's receipt of the district's notice concerning the amount of compensation. The section also provides that the municipality and the district must agree on the arbitrator, or they will select an arbitrator through a process of elimination from a list of neutral arbitrators requested from the American Arbitration Association or the Federal Mediation and Conciliation Service.

The bill sets forth procedures for the arbitration, including time frames, and the arbitrator's authority and responsibility. The emergency service district and the municipality are required to share the arbitration costs.

Section 4 of the bill adds Section 776.0521, Health and Safety Code, which applies the same binding arbitration procedures under Section 775.0221 concerning the compensation for the removal of territory from an emergency service district to counties with a population of 125,000 or less.

**Note:**

The Legislature also passed another bill addressing emergency service districts: House Bill 1108. HB 1108 contains ADR provisions identical to those contained in SB 905 and additional provisions regarding the terms of office for emergency service district board members.

INSURANCE

>>**S.B. 14** by Sen. Jackson

Insurance Code, Chapter 5

*Relating to auto and residential property insurance rates, forms and practices*

**Bill Summary:**

Insurance rates were given much attention this session, in particular the steadily increasing homeowners insurance premiums. Senate Bill 14 contains comprehensive provisions regulating residential property and commercial and personal automobile insurance, including rate regulation, regulation of insurer credit scoring, and the application of withdrawal and restriction plan requirements to previously exempt insurers.

**ADR Provision:**

Section 1.01 of the bill adds Article 5.144, Insurance Code, relating to refunds for excessive or discriminatory auto or residential property insurance premiums. The section authorizes insurers to request rate hearings with the State Office of Administrative Hearings over an excessive or discriminatory premium. The administrative law judge (ALJ) who hears the case is required to prepare a proposal for decision. The case is then sent back to the Commissioner of Insurance with the ALJ's recommendation. One of the recommendations that the ALJ can make is for the parties involved in the rate hearing to enter into negotiations.

**Note:**

An earlier version of the bill would have provided for binding arbitration. The House Substitute would have added a provision under Article 5.142, Insurance Code, regarding binding arbitration in cases when the Commissioner of Insurance disapproves of an auto or residential property insurance rate. An insurer who received notice of the Commissioner's disapproval of its rate would have been authorized to request binding arbitration within 20 days after notification of the Commissioner's disapproval. Insurers that requested binding arbitration would have waived the right to appeal the Commissioner's disapproval beyond the binding arbitration and would have been required to pay the entire cost of the arbitration. The provision would have also authorized the Office of Public Insurance Counsel to participate in and present evidence at the arbitration. The provision regarding binding arbitration was removed from the final version of the bill.

## LABOR

### **>>S.B. 1804** by Sen. Harris

Labor Code, Chapter 413

*Relating to certain health care treatment plans and pharmaceutical services and to medical necessity reviews*

#### **Bill Summary:**

Senate Bill 1804 regulates the role of insurance carriers in preauthorized health care treatment, treatment plans, and pharmaceutical services. The bill stipulates that the Texas Workers' Compensation Commission (TWCC) cannot prohibit discussion of pharmaceutical services between an insurance carrier and health care provider. S.B. 1804 also addresses medical necessity reviews performed by an independent review organization.

#### **ADR Provision:**

Section 2 of the bill amends Section 413.031, Labor Code, regarding the medical necessity review process performed by an independent review organization (IRO). While performing medical necessity reviews, IROs are required to consider TWCC's health care reimbursement policies and guidelines if raised by one of the parties to the dispute. If the IRO's decision is contrary to the commission's health care reimbursement policies and guidelines, the IRO must explain its reasoning for coming to a different conclusion in the decision. IROs are allowed to consider current medical necessity review reimbursement policies, even if a party to the dispute does not mention the reimbursement policies.

#### **Note:**

An earlier version of the bill would have required TWCC to evaluate the costs and effectiveness of the medical dispute resolution process and to study proposals for the establishment of an alternative process. TWCC would have been required to emphasize the establishment of a less expensive process in its study and proposal of an alternative process. TWCC also would have been required to solicit the participation of interested parties and to report its results to the Lieutenant Governor and Speaker of the House by December 1, 2004. These provisions would have expired January 1, 2006. The provisions were passed by the Senate but removed in the House substitute.

### **>>H.B. 3168** by Rep. Giddings

Labor Code, Chapter 413

*Relating to the determination of workers' compensation benefits and the resolution of disputes regarding those benefits*

#### **Bill Summary:**

In 2001, the Texas Legislature revised the Medical Dispute Resolution process for workers' compensation claims. The legislation required an independent review organization to conduct a review of a treatment's medical necessity when disputes

arose over an insurance company's or carrier's refusal to pay in whole or in part for the medical services. Depending upon the independent reviewer's specialty, the review process costs either \$460 or \$650. The Research and Oversight Council on Workers' Compensation recommended in its 2002 report that an alternative review model be used for low-cost services in dispute since approximately 30 percent of the medical necessity disputes handled by the TWCC in 2001 involved medical disputes under \$500.

**ADR Provision:**

Section 1 of the bill amends Section 413.031, Labor Code, by adding that the TWCC may by rule prescribe an alternate dispute resolution process to resolve disputes regarding medical services that cost less than a medical necessity review performed by an independent review organization. It also requires the non-prevailing party to pay the costs of the review associated with the dispute resolution process.

>>**H.B. 833** by Rep. Hochberg  
Labor Code, Chapter 408

*Relating to certain pharmaceutical services for an injured employee receiving worker's compensation medical benefits*

**Bill Summary:**

Under current law, the Texas Pharmacy Act requires pharmacists to inform patients or to display a sign informing patients of their right to refuse generic equivalent drugs. Although many insurance plans allow patients to pay a co-payment and refuse a generic substitution drug, Texas does not provide this option under its workers' compensation system. House Bill 833 permits workers' compensation claimants to purchase a brand name drug when a health care provider prescribes a generic substitute or over-the-counter alternative and requires the employee to pay the difference in costs between the drugs.

**ADR Provision:**

Section 1 of the bill amends Section 408.28, Labor Code, regarding pharmaceutical services offered under workers' compensation benefits. Employees who choose to purchase brand name drugs instead of generic or over-the-counter alternatives are prohibited from using the medical dispute resolution process for a dispute regarding the prescription provided under the TWCC's medical review process.

## PROPERTY

**>>H.B. 730** by Rep. Ritter

Property Code, New Title 16, Chapter 27

*Relating to residential construction, including certain warranties, building and performance standards, and dispute resolution; creating the Texas Residential Construction Commission*

### **Bill Summary:**

House Bill 730 establishes a new and extensive regulatory framework to address complaints of residential construction defects. Some of the bill's major components are:

- Creation of the Texas Residential Construction Commission (TRCC);
- Required registration of homebuilders with the TRCC;
- Adoption of residential construction performance standards and limited statutory warranties;
- Specific definition of "construction defect"; and
- Establishment of a state-sponsored inspection and administrative dispute resolution process.

### **ADR Provisions:**

New Title 16, Subtitle D, Chapters 426 – 430, Property Code, establish the state-sponsored inspection and dispute resolution process. However, the term "dispute resolution process" as used in the statute is a misnomer, because the parties in interest, the homeowner and the homebuilder, have no role to play once the TRCC appoints an inspector to investigate the alleged defect. After the inspector issues a recommendation, either party's only recourse is to "appeal" the recommendation to a panel of investigators, as outlined below. If the homeowner is dissatisfied with the panel's ruling, then seemingly the homeowner may pursue other legal remedies, including arbitration (which may be required under the homeowner's construction contract). The statutorily prescribed dispute resolution process, however, is a prerequisite to a homeowner filing any action for damages or other relief.

The statute is very detailed and provides many deadlines; it needs to be read very carefully by practitioners to avoid waiving any rights. For purposes of this report, we provide highlights of the dispute resolution process only to distinguish it as an ADR process:

- the new subtitle applies if a dispute is over an alleged construction defect, other than a claim solely for personal injury, survival, wrongful death, or damage to goods;
- a request for resolution is submitted on or before the 10<sup>th</sup> anniversary of the date of the initial title transfer;
- either the homeowner or the builder involved in a dispute over an alleged construction defect may submit a request to the TRCC for the inspection and dispute resolution process;
- homeowners are required to comply with the inspection and dispute resolution process before filing suit over an alleged construction defect;

- a request for the process must be made within two years after the discovery of the construction defect and no later than 30 days after the expiration of the warranty period. Written requests must meet certain criteria, including a detailed accounting of the alleged defect and any evidence depicting the defect;
- homeowners must give builders at least 30 days notice regarding the construction defects before filing a request and builders must be provided reasonable opportunity to inspect the home;
- TRCC is required to maintain a list of available third-party inspectors (with certain qualifications) and, after receiving a request for the inspection and dispute resolution process, has 15 days to appoint the next available third-party inspector from the list;
- the party requesting the inspection and dispute resolution process is required to pay for the inspection but an inspector who finds for the requesting party can order the reimbursement of all or a portion of the inspection expenses;
- homeowners and builders have 15 days to appeal the third-party inspector's recommendation to a panel consisting of three state inspectors appointed by the executive director of TRCC;
- the panel can approve, reject, or modify the inspector's recommendation or remand the dispute to the inspector for further action. The third-party inspector's recommendation or the panel's ruling constitutes a rebuttable presumption in any subsequent action between the homeowner and builder over the construction defect.

New Subtitle E, Chapter 436, Property Code, entitled Residential Construction Arbitration, states that its requirements supplement Chapter 171, Civil Practice and Remedies Code (regarding General Arbitration) and the Federal Arbitration Act. One item worth noting is that "arbitration" in the new subtitle is defined to mean the dispute resolution procedure under Section 154.027, Civil Practices and Remedies Code, which provides that arbitration is non-binding, unless the parties stipulate in advance that the award is to be binding. This definition may create some confusion considering that construction contracts generally require "binding arbitration."

Also, under this subtitle, residential construction arbitrations are required to be conducted in the county where the home is constructed, and this requirement cannot be waived by contract. Further, the subtitle directs the TRCC to appoint a Residential Construction Arbitration Task Force to study and advise the TRCC on residential arbitrators and arbitration. The task force is to report its recommendations to the 79<sup>th</sup> and 80<sup>th</sup> Legislatures. The task force provisions expire on September 1, 2007.

New Chapter 437, Property Code, addresses the reporting of residential construction arbitration awards. An individual who files a residential construction arbitration award in a Texas court is then also required to file a summary of the award with the TRCC within 30 days of the date the award is made. By rule, the TRCC is to establish a late filing fee not to exceed \$100. The statute prescribes the information to be included in the summary. Agreements prohibiting the disclosure of information contained in the arbitration award summary are unenforceable.

New Section 438.001 entitles a court to vacate a residential construction arbitration award upon a showing of manifest disregard of Texas law, in addition to the grounds for vacating an award listed under Section 171.088, Civil Practices and Remedies Code.

Concerning arbitrators, new Chapter 417, Property Code, provides for the certification of residential construction arbitrators. Certification is voluntary and non-certified arbitrators are permitted to arbitrate construction defect disputes. The TRCC is to set certification filing and renewal fees and establish eligibility requirements and certification procedures. The TRCC is required to keep an updated list of residential construction arbitrators and to make the list available to the public.

## SELECTED ADR LEGISLATION FILED IN BUT NOT PASSED BY 78<sup>TH</sup> LEGISLATURE

### CIVIL PRACTICE AND REMEDIES

>>**H.B. 538** by Rep. Hope

>>**S.B. 184** by Sen. Janek

Civil Practice and Remedies Code, Chapter 152

These bills would not have amended any ADR language but would have impacted the Dispute Resolution Centers around the state by enabling counties, if they so chose, to increase the filing fee that funds many of these centers.

Texas currently has 17 Dispute Resolution Centers operating across the state using primarily volunteer mediators. These centers offer the public affordable alternative processes to resolve disputes. House Bill 538 (and its identical companion, Senate Bill 184) would have increased the cap on filing fees available for establishing and supporting local dispute resolution centers. The bill would have increased from \$10 to \$15 the maximum amount that a Commissioners Court may set as a court cost on civil cases for the establishment and maintenance of an ADR system. The bill also would have allowed a Commissioners Court in any Texas county to establish a maximum \$5 fee in certain justice court civil cases for the creation and maintenance of an ADR system. A similar bill was defeated in the 77<sup>th</sup> Legislature.

>>**H.B. 2920** by Rep. Christian

Civil Practice and Remedies Code, Chapter 171

House Bill 2920 would have amended Chapter 171, Civil Practice and Remedies Code, to add provisions regarding consumer arbitrations. It would have included a statement that the policy of this state is “to encourage the fair, neutral and cost-effective resolution of disputes by arbitration.”

“Consumer” would have been defined as a person, partnership, or corporation that has revenues of less than \$500,000 in the previous calendar year and that seeks or acquires by purchase any goods or services. The bill would have provided for tiered arbitration fees based on the amount in controversy. It would also have made unenforceable an arbitration clause requiring the non-prevailing consumer to pay the other party’s fees and costs.

The bill would have added a section on provisions disfavoring arbitration unenforceable, to the extent that “no law, regulation, rule, or ordinance shall impair, restrict, modify, limit, or prohibit any agreement to arbitrate any dispute involving a claim for monetary damages.”

**>>S.B. 328** by Sen. West

Civil Practice and Remedies Code, Chapter 177

*Relating to the filing of certain information by arbitrators after each arbitration*

Similar to S.B. 997 (below), Senate Bill 328 would have required arbitrators, arbitration panels, and arbitration service providers to file an arbitration disclosure with the Office of Court Administration (OCA). Arbitration disclosures would have had to contain the names of each party and of each party's attorney, the name of the arbitrators or arbitration service provider, and a general description of the dispute and relief requested by each party. The disclosure would have also been required to include the arbitration decision and award, the date the award was signed, the date of appointment for the arbitrator, panel, or service provider, and fees and expenses charged by the arbitrators or the arbitration services provider. Immunity from liability would not have extended to arbitrators or arbitration service providers who recklessly or knowingly provided false information in the arbitration disclosures.

The OCA would be entitled to collect a late filing fee for disclosures filed after 31 days from the signing of the award. Arbitrators or arbitration service providers who failed to file a disclosure or pay a late filing fee would have been prohibited from conducting or administering a court-ordered arbitration until the disclosure was filed or the fee was paid. The OCA would have been required to maintain and update an electronic list of ineligible arbitrators or arbitration service providers and to include the list in its annual report. The disclosure provisions would have applied to arbitrations performed on or after January 1, 2004.

**>>S.B. 997** by Sen. West

Civil Practice and Remedies Code, Chapter 177

*Relating to making arbitration awards open records*

Senate Bill 997 would have added Chapter 177, Civil Practice and Remedies Code, relating to the filing of arbitration awards with the OCA. The bill would have set forth policy statements regarding the provision of an open records policy for arbitrations, including the need to evaluate the public policy supporting mandatory arbitration and to create a method for measuring and ensuring arbitrator and arbitration service provider accountability.

"Arbitration" would have been defined as under Section 154.027, Civil Practices and Remedies Code. The bill would have required arbitrators or arbitration service providers to file an arbitration award with the OCA within 30 days after the date of the arbitration award, subject to a late filing fee. Arbitration awards would have had to contain the names of each party and of each party's attorney, the name of the arbitrator or arbitration service provider, the arbitrator's award and the date of the award. The bill would have allowed a party to an arbitration to apply to the court in the county in which the arbitration was held for a court order to have the award sealed. Sealed arbitration awards were to be treated as sealed court records under Rule 76a, Texas Rules of Civil

Procedure. The provisions of the bill would have applied to arbitrations conducted on or after January 1, 2004.

**>>S.B. 998** by Sen. West  
Civil Practice and Remedies Code, Chapter 180

Senate Bill 998 would have added Chapter 180, Civil Practice and Remedies Code, requiring the registration of arbitrators and arbitration service providers, as defined in the bill. Arbitrators and arbitration service providers would have been required to register each year with the Secretary of State and to pay a \$10 fee with the initial registration. Arbitrators and arbitration service providers would have been required to provide their name, mailing address, and phone number. The Secretary of State would have been required to maintain a publicly accessible list of arbitrators and arbitration service providers. The penalty for failure to register with the Secretary of State would have been suspension from performing court-ordered arbitrations. The registration provisions would have applied to arbitrations conducted on or after January 1, 2004.

### EDUCATION

**>>S.B. 265** by Sen. Lucio  
Education Code, Chapter 21

Senate Bill 265 would have continued the State Board of Educator Certification (SBEC) until 2015 and would have adopted the Sunset Advisory Commission's recommendation to continue SBEC as a separate agency. SBEC would have been required to gather fingerprints and to perform background checks on prospective educators. The bill also would have required SBEC to adopt the Sunset Commission's full ADR ATB recommendation.

#### **Note:**

Instead of S.B. 265, the 78<sup>th</sup> Legislature passed House Bill 2455, which continues SBEC until 2005 and requires the Sunset Advisory Commission, in its next review, to reevaluate the appropriateness of its recommendations and to review the consolidation of administration functions and services between SBEC and the Texas Education Agency.

## GOVERNMENT

>>**S.B. 270** by Sen. Jackson  
Government Code, Chapter 467

Senate Bill 270 would have continued the Texas Lottery Commission until 2015. The bill would have adopted all of the Sunset Advisory Commission's recommendations for the Lottery Commission, including the full ADR ATB recommendation. Several of the modifications to the state's system of bingo regulation contained in S.B. 270 were passed by the Legislature in House Bill 2519. The Legislature also passed House Bill 3459, which permits the Lottery Commission to participate in one or more multijurisdictional lottery games.

### **Note:**

The 78<sup>th</sup> Legislature passed House Bill 2455, which continues the Lottery Commission until 2005 and requires the Sunset Advisory Commission to reevaluate its recommendations for the Lottery Commission.

## INSURANCE

>>**H.B. 101** by Rep. Seaman  
Insurance Code, Article 21  
*Relating to mediation of certain claims involving unfair methods of competition or unfair or deceptive acts or practices*

House Bill 101 would have modified the mediation process for insurance disputes involving unfair methods of competition or deceptive acts or practices. Under current law, a party has 90 days after the date of service of a pleading to file a motion to compel mediation. The bill would have amended the language so that a court would have been required to order mediation in such a case within 30 days after service of a pleading. The bill also would have amended other time frames.

## LABOR

>>**H.B. 359** by Rep. Dutton  
Labor Code, Chapter 25  
*Relating to a restriction on the mandatory arbitration of certain employment disputes*

House Bill 359 would have added Chapter 25, Labor Code, to prohibit mandatory arbitration of employment discrimination disputes. Employers would have been prohibited from requiring, as a condition of employment for an at-will employee, mandatory arbitration of employment practice disputes that the employee could bring

before the federal Equal Employment Opportunity Commission or the Texas Commission on Human Rights.

>>**H.B. 371** by Rep. Dutton

Labor Code, Chapter 26

*Relating to certain restrictions on the arbitration of an employment dispute*

House Bill 371 would have added Chapter 26, Labor Code, to prohibit mandatory arbitration for new employees who began employment on or after September 1, 2003. During the first 90 days of employment, employers would have been prohibited from requiring at-will employees to concede to mandatory arbitration as a condition of employment.

## WATER

>>**H.B. 1379** by Rep. Cook

>>**S.B. 738** by Sen. Duncan

Water Code, Chapter 36

*Relating to the notice and hearing process for groundwater conservation districts*

These bills would have amended and added several provisions to Chapter 36, Water Code, to set forth in more detail the notice and hearing process for groundwater districts considering permit applications and permit renewals related to the withdrawal and use of groundwater. Certain provisions would have given the presiding officer over a contested groundwater permit hearing specific authority to refer the parties to mediation, to appoint a mediator, and to allocate mediation costs. The bill also included a general statement that a groundwater conservation district may develop and use ADR procedures in accordance with the Governmental Dispute Resolution Act (GDRA).

**Note:** As governmental bodies subject to the GDRA, groundwater conservation districts have the authority to refer parties in contested permit matters to mediation. This bill was drafted to clarify that authority under Chapter 36, Water Code, which specifically governs groundwater conservation districts.