



CENTER FOR PUBLIC POLICY **DISPUTE RESOLUTION**

2011 Texas ADR Legislative Highlights

The Center for Public Policy Dispute Resolution highlights some notable bills from the 2011 legislative session affecting alternative dispute resolution in Texas.

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**NOTABLE ADR BILLS
PASSED BY THE 82nd LEGISLATURE**

ARBITRATION

>> SB 1216

Sen. Estes

Family Code: Chapter 6, Subchapter G; Chapter 153, Subchapter A

Relating to determination of the validity and enforceability of a contract containing an arbitration agreement in suits for dissolution of marriage and certain suits affecting the parent-child relationship.

In suits mentioned in the caption, if a party opposes a motion to compel arbitration or seeks a stay of arbitration on the ground that the contract containing the arbitration clause is not valid or enforceable, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration. Certain agreements are exempt from the application of this section, including a mediated settlement agreement and a collaborative law agreement.

>> HB 2605

Rep. Taylor

Labor Code, Chapter 413 among others

Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.

The bill allows a party in a medical fee dispute when issues are unresolved in a benefits review conference to elect arbitration or a contested case hearing at the State Office of Administrative Office.

A new section, Section 413.0312, provides as follows:

REVIEW OF MEDICAL FEE DISPUTES; BENEFIT REVIEW CONFERENCE.

(a) This section applies only to a medical fee dispute that remains unresolved after any applicable review under Sections 413.031(b) through (i).

...

(d) If issues remain unresolved after a benefit review conference, the parties may elect to engage in arbitration as provided by Section 410.104.

(e) If arbitration is not elected as described by Subsection (d), a party to a medical fee dispute described by Subsection (a) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

MEDIATION

>> **HB 1887**

Rep. Villarreal

Tax Code, Chapter 42, Subchapter B

Relating to tax administration of and procedures for property tax protests and appeals; changing the elements of an offense.

Interested parties contend that there are several procedural items relating to property tax protests and appeals that cost taxpayers and appraisal districts needless time and expense and can result in a taxpayer losing an appeal or protest on what amounts to a technicality. These problems include reluctance on the part of taxpayers and appraisal districts to participate in mediation or other forms of inexpensive lawsuit resolution. Under this bill, the court would require parties to an appeal to attend mediation on the motion of one party or may send the parties to mediation on its own motion.

>> **HB 2463**

Rep. Reynolds

Labor Code, Section 21.305

Relating to access to certain records regarding an employment discrimination claim.

Currently, the Texas Workforce Commission (TWC), under agreement with the federal Equal Employment Opportunity Commission, investigates complaints of employment discrimination. At the request of TWC, this bill places the substance of federal exemptions into state statute. This bill amends current law relating to access to certain records regarding an employment discrimination claim. In listing information that is not considered public information, the new law includes information prepared for mediation purposes.

Specifically, the amendment states that:

Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of Chapter 552, Government Code, and may not be disclosed to a party to a complaint filed under Section 21.201:

... information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes.

MISCELLANEOUS

>> **SB 1271**

Sen. Duncan

Civil Practice and Remedies Code, Sections 152.001-002

Relating to alternative dispute resolution systems established by counties

This bill provides that community dispute resolution centers (DRCs) can resolve disputes among entities and units of government, as well as individuals. The bill analysis indicates that the intent

was to recognize the current practice among DRCs in handling disputes other than those among individuals. The final version differs from the original in omitting a provision about referral of criminal cases to DRCs.

>> **HB 3** (special session)

Rep. Smithee

Insurance Code, Chapter 2210

Relating to the operation of the Texas Windstorm Insurance Association, to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.

This bill clarifies and expands recent legislative changes so that the Texas Windstorm Insurance Association (TWIA), to be renamed the Texas Coastal Insurance Plan Association, will be regulated in a manner more consistent with its status as a quasi-governmental entity.

A new section, Section 2210.554, provides for voluntary arbitration of certain coverage and claim disputes. It allows a person insured under this chapter to elect to purchase a binding arbitration endorsement in a form prescribed by the commissioner. A person who elects to purchase an endorsement under this section must arbitrate a dispute involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of the claim. An arbitration under this section shall be conducted in the manner and under rules and deadlines prescribed by the commissioner by rule.

Another new section concerning disputes over denied coverage, the claimant must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim. Upon receiving the notice, the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code. If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the time indicated, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred.

>> **HB 1178**

Rep. Flynn

Government Code, Chapter 431

Relating to employment protection for members of the state military forces and specialty license plates for female members of the armed forces.

This bill in part amends Section 431.006 by expanding provisions regarding the reemployment of persons called to training or duty to “an employer” (deleting the word “private”) and “an employee” (deleting the word “permanent”) who is a member of the state military forces of this state or any other state. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. New language makes a

violation of this section an unlawful employment practice. A person injured by a violation of this section may file a complaint with the Texas Workforce Commission civil rights division. The bill also adds provisions concerning the use of ADR to resolve disputes under Section 431.006. ADR is defined as including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration. The settlement of a disputed claim under this subchapter that results from the use of traditional or alternative means of dispute resolution is binding on the parties to the claim.

>> **HB 3833**

Rep. Phillips

Family Code, new Title 1-A

Relating to the adoption of a Uniform Collaborative Law Act in regard to family law matters.

The Texas Commission on Uniform State Laws recommended that the collaborative law process be codified to incorporate best practices and uniformity with the laws of other states. The collaborative law process is a form of alternative dispute resolution that enables couples who have decided to dissolve their marriage to work with lawyers and other family professionals to find a resolution that best meets the needs of both parties and their children.

STATE AGENCIES WITH ADR PROVISIONS

In 2002, the Texas Sunset Advisory Commission adopted an Across-the-Board recommendation (ATB) that encourages state agencies to use alternative dispute resolution (ADR) processes. This ATB reinforces on an individual state agency level the policy stated in the Governmental Dispute Resolution Act:

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.

Tex. Gov't Code Ann., §2009.002. The ATB, among other things, directs an agency:

- (1) to develop and implement a policy to encourage the use of negotiated rulemaking and ADR procedures to assist in the resolution of internal and external disputes, and
- (2) to designate a coordinator to implement the policy and collect data.

Through the Sunset review process, this ATB, when applied, is included in each agency's Sunset bill and becomes part of that agency's statutory framework when the bill is passed and becomes law. The ATB was applied for the first time in the 2003 Sunset review process. Since then, over fifty state agencies have acquired the ADR provisions through the Sunset process. Below is the list of agencies that acquired the ADR provisions in this most recent session:

Emergency Communications, Commission on State

Environmental Quality, Texas Commission on
Forest Service, Texas
Hearing Instruments, State Committee of Examiners in the
Fitting and Dispensing of
*Housing Corporation, Texas State Affordable
Injured Employee Counsel, Office of
*Insurance Counsel, Office of Public
*Insurance, Texas Department of
Texas Juvenile Justice Department (new)
Public Finance Authority, Texas
*Racing Commission, Texas
Soil and Water Conservation Board, State
Speech-Language Pathology and Audiology, State Board of Examiners for
*Transportation, Texas Department of
Water Development Board, Texas
Workers' Compensation, Division of
*limited scope review