



2015 Texas ADR Legislative Report

The Center for Public Policy Dispute Resolution is pleased to provide this selection of notable bills from the 2015 legislative session that impact (or could have impacted) the use of alternative dispute resolution in Texas.

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NOTABLE ADR BILLS PASSED BY THE 84th LEGISLATURE

ARBITRATION

HB 1455 – Sen. King of Parker

Relating to procedures required before certain condominium associations file a suit or initiate an arbitration proceeding for a defect or design claim.

This bill allows a condominium declaration to provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved. An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim.

MEDIATION

SB 481 – Sen. Hancock

Relating to consumer information concerning facility-based physicians and notice and availability of mediation for balance billing by a facility-based physician.

This bill expands the notice requirements and circumstances under which mandatory mediation of out-of-network health benefit payment disputes can be requested by: (1) requiring that notice of the availability of mandatory mediation be conspicuous and in plain language on the patient's billing statement; (2) expanding the definition of "facilities-based physician" to include assistant surgeons; and (3) requiring the threshold amount in dispute to be greater than \$500 (lowered from \$1000).

SB 1369 – Sen. Zaffirini

Relating to reports on attorney ad litem, guardian ad litem, guardian, mediator, and competency evaluator appointments made by courts in this state and an interim study on a billing system for attorneys ad litem.

This bill requires court clerks to prepare reports on court appointments of attorneys ad litem, guardians ad litem, guardians, mediators, and competency evaluators. The monthly reports must include the name of the person appointed, the judge making the appointment, the specific case, the number of cases to which a person was appointed, the total amount of compensation paid to each appointed person and the source of compensation (with more details if the total exceeds \$1000 for any month). Reports are to be submitted to the Office of Court Administration (OCA)

based on forms developed by OCA. The Texas Judicial Council is directed to adopt rules, as it considers appropriate, to implement the requirements. Courts that fail to submit reports are ineligible for any grant money awarded by the state or state agency for the next state fiscal biennium. **Exemptions:** The reporting requirements do not apply to certain appointments and to mediations conducted by a dispute resolution center established under Chapter 152, Civil Practice and Remedies Code.

SB 1876 – Sen. Zaffirini

Relating to the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians in certain counties.

This bill requires courts in counties with a population of 25,000 or more to establish and maintain lists of those who are registered with the court as attorneys ad litem, guardians ad litem, mediators, and guardians. When an appointment is needed (which for mediation is specified to be when the parties are unable to agree on a mediator), a court using a rotation system is to appoint the first person on the list. Under certain circumstances, including complex cases requiring expertise or prior involvement in the case, the court may appoint someone else. The lists are to be posted at the courthouse and on its website. **Exemptions:** The appointment requirements do not apply to certain appointments and to mediations conducted by a dispute resolution center established under Chapter 152, Civil Practice and Remedies Code.

MISCELLANEOUS

SB 914 – Sen. Kolthorst

Relating to a council on long-term care facility surveys and informal dispute resolution.

This bill directs the executive commissioner of the Health and Human Services Commission, not later than December 1, 2015, to establish a Long-Term Care Facility Survey and Informal Dispute Resolution Council. The Council is to be composed of 18 members appointed by the executive commissioner from both the Department of Aging and Disability Services (DADS) and the long-term care facilities industry. The Council is to study and make recommendations regarding a “consistent survey and informal dispute resolution process for long-term care facilities”, including best practices and protocols to make survey, inspection, and informal dispute resolution processes more efficient and less burdensome on long-term care facilities. The bill requires the council to submit a report on its findings and recommendations to the executive commissioner, the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate legislative committees no later than January 1, 2017.

NOTABLE BILLS THAT DID NOT PASS

HB 3184 – Rep. McClendon;

Relating to the establishment, operation, and funding of victim-offender mediation programs; authorizing fees.

- **This bill passed both houses but was vetoed by the Governor on 6/20/2015**

This bill would have amended the Code of Criminal Procedure to authorize counties and cities, in coordination with the state attorney, to establish a pretrial victim-offender mediation program for persons arrested for or charged with a misdemeanor or felony property offense who had not previously been convicted of a felony or a misdemeanor, other than a traffic offense punishable by fine only. The bill authorized a court that implemented such a program to adopt rules of procedure to implement or operate the program. A referral to mediation would require the consent of the state attorney and the victim. The bill prohibited the attorney representing the state and the attorney representing the defendant in the criminal action from serving as a mediator in the defendant's pretrial victim-offender mediation program. The bill authorized the court, if a defendant entered such a program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt.

The bill would also have amended the Family Code to provide for victim-offender mediation programs to be implemented and administered by juvenile boards, under guidelines adopted by the Texas Juvenile Justice Board, and for the sealing of records for juveniles who had successfully completed a victim-offender mediation program.

HB 3698 – Rep. Molly White

Relating to nonbinding dispute resolution proceedings conducted by religious organizations or authorities.

- **A committee substitute for this bill was left pending in Judiciary and Jurisprudence Committee after public hearing.**

This original bill would have added a section to Chapter 154 of the Civil Practice and Remedies Code to specifically address a “religious organization or authority” that provides a nonbinding dispute resolution process. The term “religious organization or authority” was not defined in the bill. Among other requirements, the religious organization or authority would have to make certain disclosures, including that a nonbinding dispute resolution proceeding that results in a settlement agreement is not binding on the parties and does not have the force of law unless and until a judge signs the settlement agreement. The bill also provided that “judges are bound by public policy imperatives and will not sign a settlement agreement that is void on its face by virtue of the application of foreign law to the dispute that violates the public policy of this state, meaning an agreement that violates good morals or natural justice or is prejudicial to the general interests of the citizens of this state”.

A committee substitute was presented that would have changed much of the bill, including the scope to address “nonbinding mediations and arbitrations conducted outside a legal setting” and would have created a criminal offense for persons who violated the written disclosure requirements.

HB 1195 – Rep. Bohac

Relating to a disclosure by an attorney before accepting representation of a client in a suit for the dissolution of marriage.

- **This bill was reported favorably from the Juvenile Justice and Family Issues Committee, but did not advance to the floor of the House.**

This bill would have required an attorney to provide to a prospective client a disclosure form that included information about arbitration, mediation, collaborative law, and alternatives to retaining an attorney for the dissolution of a marriage. The State Bar of Texas was to adopt the disclosure form, and the client would have to acknowledge in writing that such disclosure had been received.

HB 670 – Rep. Flynn

Relating to the application of foreign laws and foreign forum selection in this state.

- **This bill was reported favorably from the Judiciary and Civil Jurisprudence Committee and placed on the general state calendar, but did not advance.**

A number of bills, including this one, were introduced this session aimed at prohibiting the application of foreign laws when doing so would preclude a right guaranteed under the U.S. or Texas Constitution. This bill was very broad in that it would have applied to any ruling or decision of a court, arbitrator, or administrative adjudicator. It also would have made a contract provision providing that a foreign law was to govern a dispute arising under the contract void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the U.S. or Texas Constitution.

Other bills would have prohibited the application of foreign law specifically to family law matters. See e.g., **HB 899** – Rep. Fallon; **HB 562** – Rep. Leach; **SB 531** – Sen. Campbell. **HB 562** and **SB 531** were subsequently substituted to provide that the application of foreign law was also prohibited if it violated good morals or natural justice or was prejudicial to the general interests of the citizens of this state.