

Public Resource Series Number Six

August 2001

2001 Texas ADR Legislative Report

Center for Public Policy Dispute Resolution

The University of Texas School of Law

727 East Dean Keeton Street

Austin, Texas 78705

(512) 471-3507

(512) 232-1198 FAX

cppdr@mail.law.utexas.edu

<http://www.utexas.edu/law/acadprogs/cppdr>

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	1
EXECUTIVE SUMMARY	2-3
ADR Legislation Passed by the 77th Legislature	4
Criminal Procedure	4
H.B. 1572 by Rep. Haggerty	4
H.B. 2494 by Rep. Haggerty	5
Family Code	6
H.B. 1363 by Rep. Goodman	6
H.B. 1452 by Rep. Menendez and S.B. 667 by Sen. Van de Putte	6
S.C.R. 20 by Sen. West	7
Government Code	7
S.B. 322 by Sen. Lucio	7
S.B. 347 by Sen. Brown	7
S.B. 1839 by Sen. Moncrief	8
H.B. 2760 by Rep. Brown	8
Nursing Home Bills: Health and Safety Code, Government Code, Human Resources Code	8
S.B. 1839 by Sen. Moncrief	9
S.B. 527 by Sen. Moncrief	10
Other Health and Safety Code ADR Bills	11
H.B. 3152 by Rep. Capelo	11
Human Resources Code	12
H.B. 1691 by Rep. Maxey	12
Labor Code	12
H.B. 2600 by Rep. Brimer	12
Civil Practice and Remedies Code	13
H.B. 2812 by Rep. Wolens	13
Property Code	13
S.B. 507 by Sen. Carona	13
Texas Motor Vehicle Code	14
H.B. 1665 by Rep. Alexander	14
Miscellaneous Revised Civil Statutes	14
S.B. 714 by Sen. Sibley	14
Natural Resource Code	15
H.B. 3410 by Rep. McReynolds and S.B. 1806 by Sen. Lucio	15
The Water Bills	16
S.B. 2 by Sen. Brown	16
H.B. 1784 by Rep. Cook	17

Vetoed Bills	18
H.B. 2677 by Rep. Bailey	18
H.B. 3185 by Rep. Turner	18
H.B. 1862 by Rep. Eiland	18
Selected ADR Legislation Considered and Not Passed by the 77th Legislature ...	19
H.B. 1740 by Rep. Dunham	19
H.B. 2730 by Rep. Gray and S.B. 1587 by Sen. Moncrief	19
S.B. 1706 by Sen. Van de Putte	19
S.B. 604 by Sen. Sibley	20
S.B. 1090 by Sen. Ellis	20
S.B. 1541 by Sen. Duncan	20
S.B. 1783 by Sen. Sibley	21
H.B. 1364 by Rep. Goodman	21
H.B. 1437 by Rep. Olivo	21
H.B. 2465 by Rep. Corte	21
H.B. 3472 by Rep. Bailey	22
S.B. 1179 by Sen. Gallegos	22
S.B. 1324 by Sen. Brown	22
S.B. 1673 by Sen. Jackson	22

ACKNOWLEDGEMENTS

The 2001 Texas ADR Legislative Report is the product of the efforts of the staff and student interns of the Center for Public Policy Dispute Resolution at the University of Texas School of Law. During the session, Writer Mott lead a student intern team of Paul Quinzi, Marta McLaughlin, and Adam Abrogio in tracking and performing the initial analysis of well over 100 bills. Graduation and summer jobs led to the departure of this very able team, but the Center was fortunate to add students Ware Wendell and Esther Cervantes as summer interns. This duo updated bill analyses to reflect amendments made during the session and tracked the status of bills after the adjournment of the Legislature through the deadline for the Governor's actions on the bill. Pam Geiger, a former intern, consulted with the Center from time to time and provided the benefit of her experience from the 1999 legislative session. John Fleming, Deputy Director of the Center, provided general oversight to the interns and acted as editor for the project. Sunni Brown, the Center's administrative assistant, prepared the layout and design. Tracy Tarver, Business and Program Director, was responsible for getting the raw manuscript into print. The Center's Executive Director, Jan Summer, provided analysis and commentary throughout the session and assisted in reviewing and editing the final report.

The Center wishes to extend a very special thanks to Brent Goleman and J. Lynn Carl, and the entire staff of **GalleryWatch.com**. GalleryWatch was the Internet provider of legislative tracking services for the Center this session. GalleryWatch provided daily reports with updates on amendments, committee hearings, and actions on all the bills followed by the Center.

EXECUTIVE SUMMARY

Over 100 bills containing one or more alternative dispute resolution terms were introduced during the 77th Legislature. A number of these bills made no substantive change to the ADR provisions of the statutes that were being revised. In the end, only twenty bills with substantive ADR content were enacted and signed by the Governor. This "pass rate" is not out of line with the ratio of all bills introduced compared to bills enacted and signed. This session a total of 5,702 bills were introduced and 1,507 bills were passed by both chambers and signed by the Governor.

Texas continues to be a national leader for alternative dispute resolution legislation. For instance, Texas ADR practitioners generally agree that Chapter 154 of the Civil Practices and Remedies Code, the basic ADR statute in Texas, has better confidentiality protection provisions than the Uniform Mediation Act under consideration by the National Commission on Uniform State Laws. The Texas Bar ADR Section is likely to oppose adoption of the Uniform Act if it is ever offered in Texas. The Governmental Dispute Resolution Act (Government Code Chapter 2009) is itself somewhat of a "model law" in that New Mexico and Utah have looked to that Act to fashion their own Government Dispute Resolution proposals. Texas remains one of a handful of states to have a state negotiated rulemaking statute (Government Code Chapter 2008).

Texas has not yet adopted a comprehensive scheme to regulate the profession of mediation. While some states have adopted statutes to credential and regulate mediators, Texas is approaching the issue differently. On one front, the Texas Supreme Court is working on proposed rules to provide for the registration and regulation of mediators in all court annexed cases. On a second front, all of the major mediator organizations in Texas have established the Texas Mediator Credentialing Association which will provide a Texas-style, that is to say voluntary and self-regulatory, approach to achieving and maintaining mediator quality and professionalism.

Thus, it is not surprising that the 77th Legislature did not pass any single ADR bill which could be considered a "major" bill of broad applicability. Rather, the twenty bills which were enacted continue to reflect the trend to apply ADR in specific settings such as enforcement of nursing home administrative cases or the resolution of disputes that may arise in the state-wide water planning process.

As always, some of the bills not passed remain worthy of discussion for the future. In some instances, these bills simply became victims of the clock and died not because of opposition, but because of lack of time for the bills to move all the way through the legislative process.

Although not enacted, H.B. 2730 by Rep. Gray, and its Senate companion S.B. 1587 by Senator Moncrief, demonstrate the creativity of the legislature relating to ADR. The legislature often must resolve scope of practice disputes between health care professional groups. These bills would have provided for mediation between the competing health care professional groups at the discretion of a legislative committee chair, prior to any committee hearing on scope of practice legislation. At the House committee hearing on H.B. 2730, a representative of a coalition of various health care professionals testified that for the past seven years the coalition has used a collaborative process to work out potential "turf wars" over scope of practice issues. In each instance, the group has been able to reach agreement and to present a consensus

recommendation to the legislature. Because of this success with an informal process, look for a version of H.B. 2730 and S.B. 1587 to be introduced in 2003.

Another trend observed this session is the growing concern about the use of "pre-dispute" binding arbitration provisions in contracts where bargaining power of the parties may not be equal. This concern is reflected in S.B. 322 (which passed) restricting the inclusion of arbitration provisions in mortgages made under bond programs administered by the Texas Department of Housing and Community Affairs. This concern is also reflected in S.B. 1706 (which did not pass) that would have prohibited pre-dispute arbitration clauses in high interest rate mortgage loans. H.B. 1862, which was intended to speed up payment of health providers by health plans, contained a provision which would have prohibited "pre-dispute" ADR clauses, including arbitration, in contracts between the health plans and the professional providers. This bill passed the Legislature, but was vetoed by the Governor. One of the reasons that the Governor gave for his veto was his concern that the bill unduly discouraged alternative dispute resolution.

Given the preemption by the Federal Arbitration Act of state acts that purport to restrict or invalidate arbitration agreements, the question must be asked, "To what extent can the Legislature effectively act?" The answer is, maybe more than first meets the eye. Proposed S.B. 1706, for example, contained detailed provisions on arbitrator disclosures and arbitration procedures. To the extent that these proposals govern the procedure for arbitration and do not attempt to discriminate against contracts for arbitration, such proposals may pass muster. Also, interesting issues remain to be resolved as to whether the Eleventh Amendment to the U.S. Constitution may permit a state to sustain an FAA preemption challenge to a bill such as S.B. 322 given the U.S. Supreme Court's recent federalism jurisprudence.

Overall the news is good. Alternative dispute resolution is firmly established in Texas. The Legislature continues to support and expand its use. The controversies which may exist are healthy as Texas continues to think innovatively and critically about ADR and its appropriate use.

ADR LEGISLATION PASSED BY THE 77th LEGISLATURE

CODE OF CRIMINAL PROCEDURE

H.B. 1572 *by Rep. Haggerty*

Code of Criminal Procedure, Chapter 56; Civil Practice and Remedies Code, Chapter 154.023; Government Code, Chapter 2009.053

Victim-Offender Mediation Program.

Bill Summary:

This bill establishes rights for crime victims with respect to victims' impact statements, restitution, and victim-offender mediation. Rights conferred on victims by this bill include the following: the right to require the attorney representing the state to consider a victim's impact statement before entering into a plea agreement; the right to be informed by the state's attorney of any appellate proceedings; the right to notification if the offender is transferred to another correctional facility or escapes; the right to have counsel representing the victim present at a hearing in which the victim must testify; and the right to request victim-offender mediation.

ADR Provision:

Section 7 of the bill adds Article 56.13 to the Code of Criminal Procedure relating to the victim-offender mediation program for the Texas Department of Criminal Justice (TDCJ). TDCJ has operated a pilot victim-offender mediation project for several years. The new section makes the program permanent by directing TDCJ to provide mediation services and to train volunteers to mediate victim-offender cases.

Section 12 of the bill amends Section 154.023 of the Civil Practice and Remedies Code (Texas ADR Procedures Act) by adding subsection (c), to clarify that victim-offender mediation is included under the definition of "mediation." Section 13 of the bill adds a new subsection (g) to Civil Practice and Remedies Code Section 154.073 to expressly extend the confidentiality provisions of Chapter 154 to victim-offender mediations. These additions to Chapter 154 were made in response to an Attorney General's Open Records opinion that victim-offender mediation was not "mediation" as defined in Chapter 154. This ruling caused considerable discussion and concern among the ADR community.

Section 11 of the bill amends Government Code Section 2009.053(a) by adding a new subsection (2). The new subsection provides that TDCJ may appoint a mediator for a victim-offender mediation without the parties' approval as to the mediator.

Comment: While at first glance this seems inconsistent with best practice, as a practical matter, the parties retain the right to approve the mediator. The victim-offender mediation program is entirely voluntary. Under the TDCJ program a mediator is assigned to a case upon request of a victim who is interested in using mediation. That mediator then contacts the offender to determine the offender's willingness to participate in mediation. The mediator often works several months with both the victim and the offender to explore whether or not the mediation

would be appropriate. The mediator consults with the victim and offender to assist each of them in answering extensive questionnaires and in completing introspective journals which are necessary to assess the appropriateness of mediation and to prepare each of them for eventual face-to-face session which may occur. Thus, much of the early work of the mediator is one of conflict assessment. Yet because the process remains voluntary, new Section 2009.053(a) does not materially affect the principle that parties should generally be permitted to approve the designation of mediators. If a party to a mediation under this program objected to a particular mediator, the party could simply request the designation of another mediator as a condition of his or her continued participation in the process.

H.B. 2494 *by Rep. Haggerty*

Code of Criminal Procedure, Article 42.11; Government Code, Subtitle G, Title 4, Chapter 510
Dispute Resolution Rules for Conflicts under the Interstate Compact for Adult Offender Supervision.

Bill Summary:

H.B. 2494, which pertains to the State of Texas's entrance into the Interstate Compact for Adult Offender Supervision, establishes the Texas State Council for Interstate Adult Offender Supervision. This new Compact is a joint project of the Council of State Governments and the National Institute of Corrections (a department of the U.S. Department of Justice). The new Compact is designed to replace the existing compact, which was enacted in 1937. Briefly stated, the various states in the compact recognize a responsibility for the supervision of adult offenders in the community who are authorized, pursuant to the rules and bylaws of the compact, to travel across state lines. Through cooperative effort and the creation of an Interstate Commission, the compact essentially allows the states to promote public safety and protect the rights of victims through the regulation of interstate movement, tracking, supervision, and rehabilitation of offenders in the community. Article 42.11 of the Code of Criminal Procedure is to be repealed one year after the Interstate Compact for Adult Offender Supervision becomes effective.

ADR Provision:

Section 510.017, Article IV, subsection (o) of the Government Code provides that the Interstate Commission shall have the power to provide for dispute resolution among the compacting states. Section 510.017, Article VII, which deals with the rulemaking functions of the Interstate Commission, states at subsection (e)(10) that rules pertaining to mediation, arbitration, and dispute resolution must be addressed within 12 months after the first meeting of the Interstate Commission. Article VIII, subsection (b)(2) of Section 510.017 directs the Interstate Commission to enact a bylaw or rule providing for both mediation and binding dispute resolution for resolving disputes between compacting states.

Note on Effective Date:

The Compact does not come into existence until the later of July 1, 2001 or the date the Compact is adopted by 35 states. As of May 31, 2001, only 21 states had passed legislation adopting the Compact.

FAMILY CODE

H.B. 1363 *by Rep. Goodman*

Family Code Chapter 153, and Family Code Chapter 6
Collaborative Law Process.

Bill Summary and ADR Provisions:

This bill "institutionalizes" the collaborative law process by adding to the Family Code a new Section 6.603 (respecting the dissolution of a marriage) and a new Section 153.0072 (respecting a suit relating to the parent-child relationship). The new sections, which are identical in content, permit parties and their attorneys to agree to the use of collaborative law process. The agreement commits the parties to use good faith efforts to resolve these matters without intervention of the court, except for the approval of the settlement agreement and entry of orders necessary to effectuate the agreement of the parties. The collaborative process agreement must: (1) be in writing; (2) provide that the parties will make a full and candid exchange of information necessary to permit evaluation of the matter; (3) include an agreement for suspension of court intervention so long as the process is being used; (4) include an agreement for the retention of joint experts; and (5) provide that counsel in the collaborative law process will withdraw from the case and not participate in the litigation of the case if the process is not successful. The agreement may contain additional provisions consistent with good faith resolution of the case. If a court is notified at least 30 days prior to trial that the parties have entered into the collaborative law process, the court may not impose discovery deadlines, set the case for trial, require compliance with a scheduling order, or dismiss the case. The bill sets forth time requirements for reporting status of the case to the court and establishes an outside limit of two years after which a court may set the case for trial or dismiss the case.

H.B. 1452 *by Rep. Menendez*

S.B. 667 *by Sen. Van de Putte*

Family Code Section 157.211

Use of mediation in proceedings to enforce child support obligations.

Bill Summary:

This bill makes certain changes to the Family Code provisions relating to placing a parent in community supervision, in lieu of commitment, for violation of orders relating to the parent-child relationship (primarily child support). The changes are intended to address social and economic issues which may impair a person's ability to comply with such orders.

ADR Provision:

The bill adds a new subsection (7) to Family Code Section 157.211. The new section permits the order for community supervision to include a requirement that the person participate in mediation or other services which may alleviate conditions that prevent the respondent from obeying the court's order.

S.C.R. 20 *by Sen. West*

Family Code Chapter 153

Encouraging the expanded use of ADR.

Bill Summary and ADR Provision:

S.C.R. 20 is a resolution adopted by the State Legislature which emphasizes the importance of ADR usage in the family law context. The resolution encourages judges to expand their use of ADR in family law matters and calls for the forwarding of official copies of the resolution itself to court administrators.

GOVERNMENT CODE

S.B. 322 *by Sen. Lucio*

Government Code, Section 2306.431

Prohibiting mandatory arbitration clauses in mortgage loans made with proceeds of Texas Department of Housing and Community Affairs.

Bill Summary:

S.B. 322 is the "sunset bill" for the Texas Department of Housing and Community Affairs. The bill continues the existence of the agency until 2003 and makes numerous substantive changes to the agency's governing structure and programs.

ADR Provision:

Section 1.25 of the bill amends Section 2306.431 of the Government Code by adding subsection (c). This new subsection requires any bonds submitted by the Texas Department of Housing and Community Affairs to the attorney general to include a certification by the governing board of the department stating that home mortgage loans made using the proceeds of the bonds do not include a mandatory arbitration clause.

Comment: The validity of the provision prohibiting mandatory arbitration clauses should be evaluated in light of opinions of the U.S. Supreme Court holding that the policy favoring arbitration under the Federal Arbitration Act, Title 9 U.S.C. preempts state laws restricting arbitration. However, could this statute be distinguished by the fact that this involves a State activity, (i.e., the approval of bonds)?

S.B. 347 *by Sen. Brown*

Government Code, Section 501.148(a)

Relating to the provision of health care, including prescription drugs, for persons confined in institutions operated by the Texas Department of Criminal Justice.

Bill Summary:

Existing Subchapter F of Chapter 501 of the Government Code has established the Correctional Managed Health Care Committee to develop and oversee a health care plan for state prison inmates. S.B. 347 calls for cooperation between the University of Texas Medical Branch

in Galveston (UTMB) and Texas Tech University Health Sciences Center (TTUHSC) in the provision of health care services and the purchasing of prescription drugs for inmates in state prisons and institutions. This bill adds a provision that requires that any purchasing contracts entered into by the oversight Committee must "include provisions necessary to ensure that UTMB is eligible for and makes reasonable efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b)." The bill also directs TTUHSC to cooperate with UTMB in its efforts to participate in the purchase of prescription drugs under Section 340B.

ADR Provision:

This bill amends the pre-existing language of Section 501.148(a) to require the Correctional Managed Health Care Committee to act as an independent third party in the resolution of disputes regarding inmate health services between (1) the Department and health care providers or (2) UTMB and TTUHSC.

S.B. 1839 by Sen. Moncrief

Government Code, Section 531.058

Relating to certain long-term care facilities.

This bill is one of several addressing nursing homes, convalescent facilities, assisted care facilities, and other long-term care facilities. The bills are discussed together below under the heading "The Nursing Home Bills: Health and Safety Code, Government Code, Human Resources Code."

H.B. 2760 by Rep. Brown

Government Code Section 791.015

Relating to the resolution of disputes arising under interlocal cooperation contracts.

Bill Summary and ADR Provision:

H.B. 2760 amends Chapter 791 of the Government Code to allow local governments that are parties to an interlocal contract to provide in the contract for the submission of disputes to the ADR procedures authorized by Government Code Chapter 2009 (the Governmental Dispute Resolution Act).

THE NURSING HOME BILLS: HEALTH AND SAFETY CODE, GOVERNMENT CODE, HUMAN RESOURCES CODE

Introduction: The 77th Legislature enacted a series of measures designed to reform the regulation of long-term care facilities and assisted living facilities in Texas. These measures amended numerous codes and statutes, including the Health and Safety Code, the Government Code, and others. These bills are best understood when examined as a group. Generally, with respect to dispute resolution, the bills direct the Health and Human Services Commission to develop informal dispute resolution processes as an alternate method of addressing resolution of enforcement actions against facilities for regulatory violations.

S.B. 1839 *by Sen. Moncrief*

Government Code, Section 531.058

Relating to certain long-term care facilities.

Bill Summary:

S.B. 1839 seeks to improve the quality of long-term care facilities in Texas. Among the many provisions included in this bill, S.B. 1839 allows for the admissibility of certain documents or testimony in a civil action; requires insurers who provide professional liability insurance policies for nursing homes to comply with requests for information from the Commissioner of Insurance; directs the Commissioner to adopt best practices for risk management and loss control for not-for-profit and for-profit nursing homes; provides insurance coverage for those nursing homes that make a verifiable effort to obtain coverage from authorized insurers; creates a stabilization reserve fund; allows for the amelioration of violations; and establishes training and continuing education policies, early warning systems, and regional offices with quality of care monitors.

ADR Provision:

This bill also adds Section 531.058 to the Government Code, which directs the Health and Human Services Commission to establish rules for an informal dispute resolution process "relating to a proposed enforcement action or related proceeding of the Texas Department of Human Services under Section 32.021(d), Human Resources Code, or Chapter 242, 247, or 252, Health and Safety Code." Apparently, "informal dispute resolution" under this section will resemble some form of arbitration because the process must provide for the "adjudication by an appropriately disinterested person." The informal dispute resolution process must be requested by the facility within ten days of notification of the violation, and thereafter the Health and Human Services Commission must complete the process not later than 30 days after receiving the request. Persons representing the facility are required to register and make certain disclosures. Section 531.058(c) precludes the Commission from delegating its responsibility in this area to another state agency.

Comment: S.B. 1869 applies to long-term care facilities. It is important to note that S.B. 527 (discussed below), which is aimed at reforms of assisted living facilities, contains parallel ADR provisions. It is unclear how the "informal dispute resolution procedure" created under this bill will interface with the arbitration procedures currently available to nursing homes and

convalescent facilities under Health and Safety Code Section 242.251, et seq. as an alternative to administrative hearings for certain categories of regulatory enforcement proceedings. Both processes are adjudicative.

The bill is silent as to whether the Legislature intended to preclude other "non-adjudicative" forms of dispute resolution such as mediation. However, since the use of other ADR processes is not specifically precluded under the bill, the Governmental Dispute Resolution Act (Government Code Chapter 2009) would seem to be sufficiently broad to permit the use of mediation if the commission were to elect to do so. This conclusion appears to be reinforced in light of the provisions of S.B. 1376, which is also authored by Sen. Moncrief. S.B. 1376 permits the Commissioner of Human Services to make available a portion of any administrative monetary penalty to an institution cited for regulatory violations for the purpose of ameliorating the condition for which the institution was cited. The offer of amelioration is to be made after conclusion of the informal dispute resolution process but prior to an administrative hearing and requires that the cited facility submit an amelioration plan. Taken as a whole, it appears that mediation would provide an effective option to accomplish the goals of these bills.

S.B. 527 by Sen. Moncrief

Health and Safety Code, Sections 247.051 and 247.041(d)

Relating to taking regulatory action against assisted living facilities, including the imposition of administrative penalties.

Bill Summary:

S.B. 527 clarifies important terms pertaining to assisted living facilities, such as practices that constitute immediate threats of harm to a resident. It also outlines requirements regarding the examination of assisted living facility inspectors. Furthermore, this bill contains numerous provisions relating to administrative penalties for assisted living facilities, as well as provisions relating to a facility's rights to correct violations, to submit a written request for a hearing, and to receive a hearing before an administrative law judge. It also allows the Commissioner of Human Services to permit a facility to use a portion of an administrative penalty to ameliorate a violation or improve services. The bill also contains provisions relating to the appropriate placement of residents within a facility. Finally, the bill establishes an assisted living facility trust fund, which is to be used for emergency assistance.

ADR Provision:

Section 247.051(a) directs the Health and Human Services Commission to establish an "informal dispute resolution process," which must "provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding under this chapter." The informal dispute resolution process must be requested by the facility within ten days of notification of the violation, and thereafter the Health and Human Services Commission must complete the process not later than 30 days after receiving the request. Persons representing the facility are required to register and make certain disclosures. Section 247.051(c) precludes the Commission from delegating its responsibility regarding the administration of the informal dispute resolution process to another state agency.

It is also important to note that this bill contains a provision specifically disallowing an ADR process - namely, arbitration - in certain settings. Section 5 of SB 1839 adds Subsection (d) to Health and Safety Code Section 247.041, which deals with the denial, suspension, or revocation of assisted living facility licenses. The new Subsection (d) provides that a court "having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought."

Comment: The "informal dispute resolution" provisions in Section 247.051(a) for assisted living facilities mirror the provisions created by S.B. 1839 in Government Code Section 531.058 with respect to long-term care facilities.

In the same manner, new Subsection 247.041(d), which prohibits a court from referring to arbitration matters involving denial, suspension, or revocation of a facility license, creates for assisted living facilities a "mirror provision" to the nursing home provision found in Section 242.061(d). The provision in Chapter 247 relating to assisted living facilities is, however, rather curious. While Chapter 242, which governs regulation of nursing homes and convalescent facilities, contains a specific subchapter that permits arbitration of certain actions involving monetary or administrative penalties (other than license denial, revocation, or suspension), Chapter 247, regulating assisted living facilities contains no subchapter permitting arbitration in administrative enforcement proceedings.

Section 247.057 of this bill contains provisions for amelioration plans for assisted living facilities. The provisions are comparable to the amelioration provisions found in S.B. 1376 relating to long-term care facilities. Thus, the same reasoning for the use of mediation for these proceedings outlined in the comments to S.B. 1839 would seem to apply to S.B. 527 as well.

OTHER HEALTH AND SAFETY CODE ADR BILLS

H.B. 3152 by Rep. Capelo

Health and Safety Code Section 241.101

Mediation of physician/hospital disputes relating to credentialing or staff privileges.

Bill Summary:

This bill amends provisions relating to due process requirements which a hospital must follow in acting on matters relating to credentialing of physicians or staff membership or staff privileges. The new provisions require that the procedures comply with the due process requirements of 42 U.S.C. Section 11101, et seq., and contains a mediation provision.

ADR Provision:

New Health and Safety Code subsection 241.101(d) and (e) provide that a physician, podiatrist, or dentist may require a hospital to mediate a dispute if the hospital fails to act timely on a completed application for staff membership or staff privileges or if the physician, podiatrist, or dentist is subject to a professional review action that could adversely affect her/his staff privileges or membership. The mediation is subject to Civil Practice and Remedies Code Chapter

154, and the mediator is required to meet the qualifications of Civil Practice and Remedies Code Section 154.052.

HUMAN RESOURCES CODE

H.B. 1691 *by Rep. Maxey*

Human Resources Code, Section 122.0205

Relating to the Texas Council on Purchasing from People with Disabilities.

Bill Summary:

H.B. 1691 amends various sections of Chapter 122 of the Human Resources Code to make several changes, including the following: a reformulation of the selection process for members of the Texas Council on Purchasing from People with Disabilities; provisions that allow the Council to employ necessary staff and establish an advisory committee; procedures to ensure compliance for state agencies that purchase products or services under this chapter; the adoption of rules by the Council for the implementation or improvement of the program authorized by this chapter; provisions allowing the Council to contract with one or more central non-profit agencies, access the records of an agency, and release information under certain circumstances; and the addition of certain categories that must be included in the report submitted under this chapter.

ADR Provision:

Section 8 of this bill adds Section 122.0205 to the Human Resources Code, which requires disputes between the Council, a central non-profit agency, or a community rehabilitation program to be first submitted to ADR. This requirement does not authorize bringing suit, modifying legal remedies available, or limiting the Council's ability to request opinions from the attorney general. The bill does not specify which alternative dispute processes may be used. Presumably alternative dispute resolution involving the Council would be governed by the Governmental Dispute Resolution Act.

LABOR CODE

H.B. 2600 *by Rep. Brimer*

Labor Code, Section 413.031

Dispute resolution processes for Workers' Compensation Cases.

Bill Summary and ADR Provision:

H.B. 2600 provides many measures that are intended to enable the Texas Workers' Compensation process to operate more efficiently and effectively. Section 6.04 of the bill amends Section 413.031(c) of the Labor Code to allow the Texas Workers' Compensation Commission to resolve disputes through the adjudication of payments due for services deemed medically necessary and appropriate for treatment of compensable injuries. The bill also directs the Commission to publish its medical dispute decisions on its website. Section 413.031(f) charges the Commission with specifying the "appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement." Subsection (k)(1)

of Section 413.031 entitles a party to dispute resolution under Chapter 410 where a medical dispute regarding spinal surgery remains unresolved after a review by an independent review organization under Subsections (d) and (e) of Section 413.031.

Comment: "Dispute resolution" as it is used in this statute appears to envision more adjudicative kinds of processes than collaborative kinds of processes.

CIVIL PRACTICE AND REMEDIES CODE

H.B. 2812 *by Rep. Wolens*

Civil Practice and Remedies Code, Section 154.073

Technical corrections.

Bill Summary:

The sheer volume of legislation makes it predictable that from time to time two or more bills will be enacted covering different subject matters but using the same Code subsections numbers or letters. This necessitates that technical corrections be made during the following session. H.B. 2812 is one of this session's technical correction bills. This bill also contains provisions which continue the Legislature's program to move the revised general statutes into Codes.

ADR Provision:

Section 21.001(6) of H.B. 2812 reletters Subsection (e) of the Civil Practice and Remedies Code, Section 154.073 as Subsection (f). Section 21.002(3) of the bill amends Civil Practice and Remedies Code, Section 154.073(a) to include Subsection (f) as an exception to the ADR subject matter confidentiality requirements outlined in the statute.

Comment: In 1999, the Legislature enacted two bills which contained a subsection "(e)" under Section 154.073 of the Civil Practice and Remedies Code. The result was two separate subsections, both of which were 154.073(e). This legislation corrects that inadvertent result by redesignating the "second" section (e) as section (f).

PROPERTY CODE

S.B. 507 *by Sen. Carona*

Property Code, Section 209.007

Mediation of disputes between homeowners and homeowners associations.

Bill Summary:

S.B. 507 amends the Property Code by adding Chapter 209, which is to be known by its short title, the Texas Residential Property Owners Protection Act. This chapter contains a number of provisions pertaining to: the recording of management certificates; the disclosing of an association's records (not including attorney records) to property owners; the giving of notice to property owners informing them of violations committed before suspending their rights or filing suit; and the foreclosing of properties.

ADR Provision:

If the homeowners association files a suit against a homeowner for something other than collection of regular or special assessments or for foreclosure under an association's lien, the homeowner may file a motion to compel mediation. (See Section 209.007(d).)

Section 209.007(e) also includes broad language, providing an owner or property owners' association with the opportunity to use alternative dispute resolution services.

Comment: Since Civil and Practice and Remedies Code Section 154.021 provides that courts may refer pending matters to alternative dispute resolution, including mediation, on its motion or the motion of the litigants, should the provisions of new Section 209.007(d) be interpreted as a restriction on the court's power to compel mediation under Civil Practice and Remedies Code Section 154.021? Hopefully, the answer is no. Read together with the broad provisions of new Section 209.007(e), these new provisions appear to be an attempt to encourage the use of alternative dispute resolution, not to discourage it.

TEXAS MOTOR VEHICLE CODE

H.B. 1665 by Rep. Alexander

Texas Motor Vehicle Code Section 5.02(d)

Tolling of time limits during pendency of ADR proceedings.

Bill Summary:

This bill makes numerous changes to the Texas Motor Vehicle Code provisions that regulate motor vehicle dealers including their relationships with manufacturers.

ADR Provision:

Current law provides for mandatory mediation between a motor vehicle dealer and manufacturer in motor vehicle dealer franchise disputes. New Texas Motor Vehicle Code Section 5.02(d) clarifies that time periods for proceedings before the Texas Motor Vehicle Board are tolled during the pendency of mandatory mediation required by the Texas Motor Vehicle Act or the franchise agreement.

MISCELLANEOUS REVISED CIVIL STATUTES

S.B. 714 by Sen. Sibley

Article 9035

Vehicle Warranty Protection Plans; Arbitration.

Bill Summary:

This bill creates a regulatory regime for vehicle protection products under the jurisdiction of the Texas Department of Licensing and Regulation. It establishes an advisory board, requires registration of "warrantors" of vehicle protection products, establishes financial responsibility

requirements, and outlines substantive requirements and restrictions for such products. The act applies to vehicle protection products purchased on or after January 1, 2002.

ADR Provision:

Section 2(b) of the bill provides that a person required to register under Article 9035 may comply with the new provisions on or after September 1, 2001, but is not required to do so until January 1, 2002. For those persons who do not elect to comply prior to January 1, 2002, Section 2(b) provides that their failure to comply prior to such date cannot be admitted in any court, administrative proceeding, arbitration, or alternative dispute resolution proceeding.

NATURAL RESOURCE CODE

H.B. 3410 *by Rep. McReynolds*

S.B. 1806 *by Sen. Lucio*

Natural Resource Code Chapter 51

Process for disposing of state vacant land.

Bill Summary:

This bill makes substantial revisions to the procedures by which the General Land Commissioner and the School Land Board determine the existence of vacant lands and dispose of those lands. The purpose of the bill is to reduce the time and complexity of determining the existence of land vacancy. The bill also creates a definition of a "good faith claimant" as a person who occupies a "vacancy" and who has enclosed the vacancy and been in possession of it for ten or more years under a good faith belief that the vacancy had been included in land previously patented by the state. Good faith claimants have a preferential right to lands declared "vacant."

ADR Provision:

Former Natural Resource Code Section 51.193 provided that an "interested party" (a term which included what is now a "good faith claimant" but also included other persons claiming an interest in the vacancy or owning land adjacent to it) could purchase land declared vacant for "market value" as determined by the School Land Board. Former Section 51.194 provided for a process of mediation and binding arbitration before a panel of three appraisers if there was a dispute over market value. Both of these provisions have been repealed in S.B. 1806. Under new Section 51.191, a good faith claimant has a preferential right to purchase the vacancy at a price to be set by the School Land Board. The new section does not contain language which requires the board to sell the vacancy for its market value, as did the former provisions. Since this apparently gives the board wider latitude to set prices in an equitable manner with respect to good faith claimants, perhaps the drafters believed the provisions for mediation and arbitration are no longer needed. In any event, it would seem that the use of mediation remains an option under the Governmental Dispute Resolution Act (Government Code Chapter 2009).

THE WATER BILLS

Introduction: As Texas grows and the demand on both surface water and groundwater resources increase, the planning and management of water resources becomes more complex. In 1997, the Legislature addressed the management of surface water with S.B. 1, which moved Texas toward development of a water plan that anticipates the State's water needs for the next 50 years. S.B. 1 divided the state into water planning regions, provided for stakeholder participation and included dispute resolution procedures to resolve conflicts between regional plans. Some of the regional planning groups have engaged facilitators to improve stakeholder participation in the regional planning process.

S.B. 2 and H.B. 1784 reflect the continuing innovation of the Texas Legislature in incorporating dispute resolution procedures in the management of environmental resources. The Senate Natural Resources Committee used a stakeholder process during the interim between the 1999 and 2001 sessions to develop recommendations for groundwater management. The recommendations coming from the stakeholder group provided critical input in the crafting of S.B. 2 which is aimed at improving the management of both groundwater and surface water resources in Texas. A number of groundwater management districts were created in separate legislation and alternative dispute resolution practices are included in several of these bills.

S.B. 2 by Sen. Brown

Various provisions of the Texas Water Code
Water management and resolution of regional conflicts.

Bill Summary:

S.B. 2 addresses the continuing need to improve water planning and management in Texas. It creates the Texas Water Advisory Council, which will provide recommendations on wide ranging water issues and will provide a state wide forum for discussions relating to river authorities. The bill addresses the conjunctive management of surface water and groundwater; contains numerous provisions relating to the authority of groundwater districts; and creates several new groundwater districts. S.B. 2 also creates a Water Infrastructure Fund to be administered by the Texas Water Development Board to provide funding for water projects which are recommended through the regional water planning process.

ADR Provisions:

Section 2.47 of S.B. 2 creates Water Code Section 36.1072 outlining a dispute resolution process to resolve conflicts between a certified groundwater management plan and the state water plan. If a conflict exists, the Texas Water Development Board (the "Board") may facilitate resolution of the conflict between the interested party, the groundwater district, or the regional planning group. Conflicts not resolved at that level are to be resolved by the Board. New Section 16.053(p) provides a similar process when a groundwater district files a petition with the Board which alleges a conflict between a regional water plan and a certified groundwater conservation district management plan.

Although not labeled "dispute resolution" per se, new Section 36.108 outlines procedures for joint planning by two or more districts which are located in the same management area.

These joint planning efforts could in some instances be appropriate for the use of facilitated collaborative processes.

When good cause exists, a district which has requested joint planning may file a request that the Texas Natural Resource Conservation Commission (TNRCC) conduct an inquiry where it can be shown that certain conditions exist (such as where groundwater in the management area is not adequately protected by the rules in another district in the management area or the other district has failed to adopt rules). If the TNRCC determines not to dismiss the petition for lack of evidence, it must appoint a review panel. The review panel may hold public hearings and take evidence. The review panel is to make findings and recommendations to the TNRCC. The review panel is also empowered to attempt to negotiate a settlement or resolve the dispute.

Comment: The TNRCC and the Board should consider establishing rules for implementing the dispute resolution processes outlined in the bill. Additionally, TNRCC or the Board should consider assisting the new groundwater districts in developing dispute resolution procedures through the development of model rules to guide the new groundwater management districts in establishing their own dispute resolution processes.

H.B. 1784 *by Rep. Cook*

Creation of Groundwater Districts for the central Carrizo-Wilcox area and mediation of disputes.

Bill Summary:

This bill creates the Brazos Valley Groundwater Conservation District, the Post Oak Savannah Groundwater Conservation District, the Mid-East Texas Groundwater Conservation District and the Carrizo-Wilcox Coordinating Council (the "Council") to provide comprehensive management and coordination of management for the Carrizo-Wilcox aquifer. The bill sets forth the boundaries of the respective districts, their general powers and duties, and names their initial boards of directors as well as providing for other organizational matters.

ADR Provisions:

The Council is authorized to mediate disputes concerning the regulation of groundwater along the boundaries of each district. Where the mediation is not successful, the Council can invoke the TNRCC resolution process set out in Water Code 36.108 (refer to above discussion of SB 2).

VETOED BILLS

LOCAL GOVERNMENT CODE

H.B. 2677 *by Rep. Bailey*

Relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.

This bill would have allowed public employee associations in a municipality of 1.9 million or more to meet and confer with a public employer over issues such as wages, hours, working conditions, and other terms and conditions of employment. The bill would have also prohibited strikes and work stoppages by employees who participated in these organizations. Section 143.406(b) of the Local Government Code would have been added to authorize the inclusion of a procedure to resolve disputes relating to a right, duty, or obligation in a ratified agreement, including binding arbitration on interpretation of the agreement.

GOVERNMENT CODE

H.B. 3185 *by Rep. Turner*

Employee dispute resolution at Texas Department of Criminal Justice.

This bill would have granted the Texas Department of Criminal Justice (TDCJ) the power to create a Professional Standards and Labor Oversight Committee. Among other provisions, this bill would have added Section 494.015 to the Government Code, requiring TDCJ to implement a regular dialogue on employment issues between management and employee representatives. As originally introduced, the bill would have required TDCJ to establish an arbitration program for certain employee grievances.

INSURANCE CODE

H.B. 1862 *by Rep. Eiland*

Restrictions on contractual agreements for binding arbitration and other dispute resolution in health provider agreements.

This bill sought to make various changes and adaptations in the Insurance Code to encourage the prompt payment of health care providers by insurance companies and HMOs under health benefit plans. Article 3.70-3C, Section 3H of the Insurance Code would have prohibited insurers from requiring "by contract or otherwise" the use of a dispute resolution procedure or binding arbitration by physicians or other health care providers. This effectively would have prohibited the inclusion of "pre-dispute" agreements to use binding arbitration in agreements between health care providers and health plans, including HMOs. However, the bill did not prohibit parties from using ADR if the agreement to mediate or arbitrate was made after the dispute arose.

SELECTED ADR LEGISLATION CONSIDERED AND NOT PASSED BY THE 77TH LEGISLATURE

H.B. 1740 *by Rep. Dunham*

Relating to appeal of certain court orders and judgments relating to arbitration.

This bill would have altered the Texas General Arbitration Act by amending Section 171.098(a) of the Civil Practice and Remedies Code governing interlocutory appeals of certain orders relating to arbitration. Currently, when parties are in state court and are dealing with an arbitration matter governed by the Federal Arbitration Act and the Texas General Arbitration Act, interlocutory review is perfected by writ of mandamus for those aspects governed by the federal act and by interlocutory appeal for those aspects governed by the state act. The primary purpose of this bill was to eliminate this "dual track" by granting state appellate courts specific jurisdiction to hear interlocutory appeals arising under the federal act. However, this bill would have done more. Currently, a party can make an interlocutory appeal of a state court order denying a motion to compel arbitration, but not an order granting a motion to compel arbitration. Likewise, a party may pursue an interlocutory appeal of an order denying a stay of litigation pending arbitration, but may not pursue an interlocutory appeal of an order granting the stay of litigation. This bill would have expanded the permissible appeals to include appeals of orders compelling arbitration and orders granting stays of litigation pending arbitration.

H.B. 2730 *by Rep. Gray*

S.B. 1587 *by Sen. Moncrief*

Relating to alternative dispute resolution procedures for proposals for legislation to change or clarify the permissible scope of practice of a health care profession.

H.B. 2730 (S.B. 1587 is the Senate companion) would have added Chapter 156 to the Civil Practice and Remedies Code, pertaining to ADR procedures for health care profession draft legislation (i.e., a proposal for legislation to change or clarify the permissible scope of practice of a health care profession to which this chapter would have applied). This bill would have allowed the chair of any house or senate committee considering the draft legislation to postpone consideration until after the completion of an ADR procedure relating to the draft legislation.

S.B. 1706 *by Sen. Van de Putte*

Relating to arbitration.

This bill would have amended or added various provisions to the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code. The bill contained a provision that would have restricted the use of "predispute" contract provisions requiring arbitration. The bill would have required arbitrators to make disclosures of facts that pose conflicts or potential conflicts of interests. Further, the bill would have required provider organizations (such as the American Arbitration Association) to disclose any agreements between the organization and any of the parties to an arbitration, and any agreements between the

provider organizations and their arbitrators. The bill also contained provisions permitting courts to consolidate arbitration cases in certain instances.

Comment: The National Conference of Commissioners on Uniform State Laws adopted the Revised Uniform Arbitration Act in 2000. Some of the issues addressed in S.B. 1706 are covered by the new revisions. The State Bar of Texas ADR section will most likely study the Revised Uniform Arbitration Act amendments and make a recommendation as to whether or not the Texas Legislature should adopt the revisions to the Revised Act in the 2003 session.

S.B. 604 by Sen. Sibley

Relating to the effect of disclosure by certain state governmental bodies of information that is confidential by law or excerpted from public discourse under the public information law.

S.B. 604 would have created a new section, Government Code 552.1015, to permit state agencies and commissions to disclose information to other state agencies, state agencies of other jurisdictions, and to agencies of the U.S. government or of another country. As originally proposed, the bill would have added a new Section 552.1015(b)(1) to provide that disclosure of confidential information held by a state agency to another state agency, federal agency, agency of another state, or foreign government would not be a violation of "...any other law of this state that prohibits the release or disclosure of the information." On its face, the measure would have acted as a "trump" to the dispute resolution confidentiality protections provided in the Texas ADR Act and under the Governmental Dispute Resolution Act. However, a committee substitute addressed this concern and would have provided for the continued protection of mediation communications.

S.B. 1090 by Sen. Ellis

Relating to codifying in general law various riders in the General Appropriations Act.

Among the many riders to the General Appropriations Act that would have been codified by this bill, S.B. 1090 would have added Section 493.0075 to the Government Code, pertaining to employee disciplinary and grievance procedures for the Texas Department of Criminal Justice. Section 493.0075(b)(2) would have charged the Texas Board of Criminal Justice with maintaining grievance procedures that recognized an employee's right of independent mediation or independent nonbinding arbitration of an employer-employee dispute resulting in the employee's termination or recommended termination.

S.B. 1541 by Sen. Duncan

Relating to the permanent management of low-level radioactive waste and mediation.

S.B. 1541 would have made various additions and amendments to the Health and Safety Code pertaining to the permanent management of low-level radioactive waste. Among the provisions included in this bill, Section 402.027 would have been amended to allow an administrative law judge of the State Office of Administrative Hearings to appoint one or more mediators to facilitate the settlement of disputes between parties involving applications and draft licenses for low-level radioactive waste management.

S.B. 1783 *by Sen. Sibley*

Relating to enhanced availability of advanced telecommunications service.

S.B. 1783, if passed, would have been known as the Texas Universal Broadband Access Act of 2001. Section 54.2045(i) of the Utilities Code would have directed municipalities and providers of cable services to avail themselves of the ADR procedures listed in Section 154.021(a) of the Civil Practice and Remedies Code. However, it is important to note that this section would not have been interpreted to require the parties to engage in binding arbitration. The bill also encouraged the use of a public policy dialogue to assist providers and rural communities develop service plans.

H.B. 1364 *by Rep. Goodman*

Relating to the funding of alternative dispute resolution systems.

This bill would have amended two sections of Chapter 152 of the Civil Practice and Remedies Code. Chapter 152 of the Civil Practice and Remedies Code permits a County Commissioner's Court to assess an additional court fee to support a community dispute resolution center. Proposed amendments to Section 152.004(a) would have raised the ADR court cost cap in most civil cases from \$10 to \$15.

Proposed amendments to Section 152.005 would have allowed an additional court cost, up to \$5, for most civil cases filed in a justice court. Currently, only Justice Courts in counties with a population of 2.5 million or more (thus, in reality, only Harris County) can assess the fee. This amendment would have extended the authority to assess the fee for justice courts to any county in Texas.

Comment: There are currently 17 community dispute resolution centers in Texas funded in whole or part by this fee. These centers mediate a substantial number of cases referred to them by the Texas courts.

H.B. 1437 *by Rep. Olivo*

Relating to certain practices in connection with a home loan.

This bill would have added Chapter 343 to the Finance Code, pertaining to home loans. Subchapter C of Chapter 343 would have outlined various limitations and prohibitions for high cost home loans. Among the many prohibitions listed, Section 343.208 of the Finance Code would have precluded lenders from making high cost home loans that contained mandatory arbitration.

H.B. 2465 *by Rep. Cortez*

Relating to a binding arbitration provision.

This bill would have added Section 35.56 to the Business & Commerce Code, requiring a seller or lessor of consumer goods or services who includes a binding arbitration clause in a contract to provide a conspicuous disclaimer above the signature line stating, "By signing this

contract you are agreeing to have any issue arising under this contract decided by neutral arbitration and you are giving up your right to jury or court trial. The law does not require that you submit to binding arbitration."

Comment: If this act had passed, it may have been subject to a claim that it is preempted by the Federal Arbitration Act. See *Doctor's Associates, Inc. v. Casarotto*, 116 S.Ct. 1652 (1996) where the U.S. Supreme Court declared a Montana state law which required a similar disclaimer invalid because of preemption by the FAA.

H.B. 3472 *by Rep. Bailey*

Relating to mediation of certain claims brought by a public employee who reports a violation of law.

H.B. 3472 would have amended Section 554.006(a) of the Government Code, directing courts that hear cases filed under Chapter 554 of the Government Code pertaining to adverse personnel actions, to order mediation if one of the parties requested it. This provision would have applied in the event that a state or local governmental entity had not already adopted a grievance or appeal procedure relating to an adverse personnel action, suspension, or termination.

S.B. 1179 *by Sen. Gallegos*

Relating to alternative dispute resolution procedures in certain police departments.

This bill would have added Section 143.135 to the Local Government Code, allowing the head of a police department to develop and implement an alternative dispute resolution program to refer certain disputes regarding police officers to mediation.

S.B. 1324 *by Sen. Brown*

Relating to express and implied warranties of a contractor for residential construction.

This bill would have amended Chapter 27 of the Property Code in an effort to protect homeowners by requiring a contractor to provide certain express warranties to a homeowner before disclaiming any implied warranties, including the implied warranties of habitability, good and workmanlike construction, and fitness. Under this bill, Section 27.105(f)(2) of the Property Code would have provided that an express written warranty and any related insurance policy could have contained provisions permitting or requiring binding arbitration of any disputed claim.

S.B. 1673 *by Sen. Jackson*

Relating to review of the termination of agreements with certain insurance agents; providing an administrative penalty.

This bill would have added Article 21.14A to the Insurance Code, pertaining to procedures and review on termination of local recording agents or solicitors by insurers. Under Section 5 of this Article, a review board would have been established to evaluate the proposed termination of an agent. This review board would have been comprised of three individuals

selected from a list of ten (with the affected agent, insurer, and Commissioner of Insurance each selecting one review board member). To qualify as a review board member, one must have served as an arbitrator or mediator for the ADR system - established under Chapter 152 of the Civil Practice and Remedies Code - in the county in which the agent conducted the majority of his or her business as an agent. If the county had not established an ADR system, the individual must have served as an arbitrator or mediator for the ADR system in an adjoining county. Finally, if the procedure outlined in the previous sentence proved impractical for a particular county, the Commissioner by rule would have determined the manner in which individuals were selected for a list in that county.