

TEXAS LAWYER

Mediation Before the Storm: Using ADR in The 60-Day Cure Period Under Texas' AI Law

By Karl Bayer

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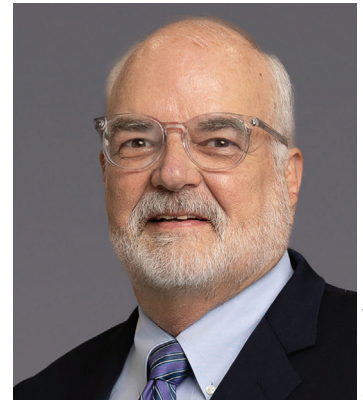
When Texas adopted the Texas Responsible AI Governance Act (TRAIGA), which will take effect Jan. 1, 2026, it positioned itself as a national leader in state-level artificial intelligence (AI) regulation. The act defines prohibited AI practices, grants enforcement authority exclusively to the Texas attorney general and establishes a 60-days “notice and cure” period before the state can initiate formal enforcement proceedings. While TRAIGA does not create a private right of action, the 60-days cure window opens a unique procedural space where alternative dispute resolution (ADR)—especially mediation—could serve as an early, constructive forum for resolving alleged violations.

The Statutory Framework and Enforcement Structure

TRAIGA bans “prohibited AI practices,” such as manipulation of human behavior, discriminatory deployment and violations of constitutional rights. Enforcement lies solely with the Texas attorney general (AG), who may issue civil investigative demands and, after the cure period, seek civil penalties. Before filing an action, however, the AG must provide written notice describing the alleged violation and allow the recipient 60-days to cure it. If the AG determines that the violation is cured and appropriate assurances are provided, no action proceeds. This structure creates an implicit opportunity for dialogue, negotiation and resolution before litigation.

The act does not expressly mention ADR. However, the combination of an investigatory phase, a defined

cure period and an administrative enforcement structure invites comparison with other Texas contexts—such as environmental or consumer protection law—where informal settlement, mediation and negotiated compliance have successfully reduced enforcement burdens.



Courtesy photo

Karl Bayer, with JAMS

Why ADR Fits the 60-Day Cure Period

The 60-days cure provision gives regulated parties an opportunity to remediate violations, propose compliance measures or contest allegations without adversarial escalation. Mediation or facilitated negotiation during this window offers several advantages:

- **Efficiency:** Mediation can occur within days, fitting the short statutory timeline.
- **Experience:** Mediators familiar with both AI technology and Texas regulatory frameworks can help clarify technical misunderstandings and compliance options.
- **Confidentiality:** Early discussions can remain confidential under Texas ADR statutes (Government Code, Chapter 2009), protecting trade secrets or sensitive model information.

- **Flexibility:** Agreements reached in mediation can include corrective measures, timelines or compliance certifications acceptable to both the AG and the regulated party.

In effect, ADR could operationalize the cure period's purpose—to encourage voluntary compliance—while minimizing resource-intensive enforcement actions.

Designing a Mediation Process within TRAIGA's Framework

Although TRAIGA is silent on ADR, Texas law provides an established foundation for incorporating mediation into governmental processes. The Texas Governmental Dispute Resolution Act (Government Code, Chapter 2009) authorizes agencies and the AG to use ADR to resolve disputes, while the Negotiated Rulemaking Act (Government Code, Chapter 2008) supports consensus-based policy development. Together, these statutes make it feasible for the AG's office to integrate mediation into TRAIGA enforcement.

A structured mediation process might include:

- **Notice phase:** Upon issuing a notice of violation, the AG could invite voluntary participation in mediation within a set time frame.
- **Selection of neutral:** The parties jointly select a mediator with experience in AI governance, compliance and administrative law.
- **Confidential premediation exchange:** The parties share technical summaries and compliance plans under confidentiality protections.
- **Facilitated discussion:** The mediator assists in clarifying factual disputes, compliance expectations and possible remedies.
- **Settlement agreement:** If resolution is achieved, a written settlement outlines corrective actions, timelines and monitoring, subject to the AG's approval.

Such a process would benefit the public's interest while allowing the AG and industry participants to conserve resources and achieve faster compliance outcomes.

Benefits of a Structured ADR Option

Introducing mediation into TRAIGA's cure period offers several systemic benefits:

- **Enhanced compliance:** Early dialogue encourages cooperative problem-solving, making enforcement more preventive than punitive.
- **Reduced litigation costs:** Both the AG and the regulated entity avoid the expense of protracted enforcement litigation.
- **Technical clarity:** Mediators with AI-related insight can bridge gaps between legal requirements and technological realities.
- **Reputation management:** A mediated settlement may mitigate reputational harm by demonstrating proactive cooperation.
- **Capacity building:** Establishing a mediation model could serve as a template for future AI regulatory regimes across states.

Challenges and Institutional Barriers

Despite these benefits, several challenges must be addressed before ADR can function effectively within TRAIGA's framework:

- **Public interest oversight:** Because TRAIGA enforcement serves public policy objectives, any mediation must remain consistent with transparency and accountability obligations. Settlements cannot obscure systemic harms or shield misconduct from oversight.
- **Authority limitations:** The AG may need explicit internal guidelines or legislative endorsement to refer enforcement matters to mediation.
- **Timeline constraints:** The 60-days window is short. Mediation procedures must be streamlined to deliver results without delaying statutory deadlines.
- **Neutral selection:** Ensuring mediators possess sufficient technical and legal knowledge is crucial for credibility.
- **Confidentiality boundaries:** Mediation confidentiality must not impede regulatory reporting or public notice obligations.

These hurdles are surmountable through structured policy guidance and standardized mediation protocols developed in consultation with the Texas Artificial Intelligence Advisory Council.

The Role of the Texas AI Council

TRAIGA creates the Texas Artificial Intelligence Advisory Council to provide advisory opinions,

policy recommendations and outreach. Although the council lacks enforcement authority, it could play a facilitative role by developing best practices for preenforcement dialogue, identifying qualified mediators and fostering a network of ADR professionals trained in AI ethics and governance. The council could also recommend model procedures for “voluntary compliance conferences” akin to mediation sessions, bridging the gap between regulation and collaboration.

Comparative Lessons From Other Sectors

Texas agencies already use ADR to resolve regulatory disputes. For example, environmental compliance cases and professional-licensing matters often employ mediation to achieve settlements that protect public interests while avoiding litigation. These models demonstrate that ADR can coexist with robust enforcement when supported by clear procedural safeguards and transparent reporting.

Internationally, similar approaches are emerging. Under the European Union’s AI Act, early compliance engagement and cooperative audits are encouraged. The Organization for Economic Co-operation and Development has also promoted mediation frameworks for AI ethics and safety disputes. Texas could therefore align its implementation of TRAIGA with global best practices by embracing structured ADR as a component of responsible AI governance.

Practical Recommendations for Implementing Mediation in the Cure Period

- Develop AG mediation protocols: The AG’s office should establish internal procedures allowing regulated entities to request mediation within the cure period.
- Create a roster of qualified mediators: Maintain a list of neutrals with experience with AI, data governance and administrative enforcement.
- Adopt model confidentiality agreements: Ensure that proprietary technical data disclosed in mediation remains protected while preserving oversight transparency.

- Integrate with the Artificial Intelligence Advisory Council’s role: The council could oversee training and ethical guidelines for AI mediators.
- Document settlements consistently: Any mediated agreement should be memorialized in writing, referencing corrective actions and monitoring mechanisms to ensure compliance.
- Publicly report aggregate outcomes: Publish anonymized summaries of mediation outcomes to enhance trust and accountability.

Broader Policy Implications

Embedding ADR within TRAIGA’s cure period would reflect a broader evolution in governance—from adversarial enforcement toward collaborative compliance. As AI systems become more complex and intertwined with critical infrastructure, resolving disputes through informed, confidential and technically grounded dialogue becomes increasingly essential. Mediation does not replace enforcement; it enhances it by ensuring that resolution mechanisms are as adaptive and intelligent as the technologies they regulate.

The 60-days cure period under TRAIGA represents more than an administrative grace period—it is an opportunity for constructive problem-solving. By integrating mediation or other ADR mechanisms into this stage, Texas could pioneer a pragmatic model of AI regulation that emphasizes cooperation, efficiency and shared responsibility. In doing so, it would extend the state’s long-standing commitment to innovative, efficient dispute resolution into the emerging frontier of AI governance.

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Karl Bayer joined JAMS in Austin in 2024, bringing over 30 years of dispute resolution experience to the Texas panel. Karl is a sought-after mediator and arbitrator in technology disputes. He frequently serves as a court-appointed neutral in intellectual property matters.