GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-368
SENATE BILL 371

AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads as rewritten:

"International Commercial ~~Arbitration.~~ Arbitration and Conciliation."

Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions."

Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in Part 1 of Article 45B of Chapter 1 of the General Statutes, as codified in Section 2 of this act.

Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of Article 45B of Chapter 1 of the General Statutes, to be entitled "International Commercial Arbitration."

Section 5. G.S. 1-567.30 reads as rewritten:

"**§ 1-567.30. Preamble and short title.**

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or conciliation proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such ~~arbitration.~~ arbitration or conciliation. This Article shall be known as the North Carolina International Commercial Arbitration and Conciliation Act".

Section 6. G.S. 1-567.31 reads as rewritten:

"**§ 1-567.31. Scope of application.**

(a) This Article applies to international commercial ~~arbitration,~~ arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this ~~Article~~ Article, except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation is international if:

(1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to ~~arbitration~~ arbitration, conciliation, or mediation, or may be submitted to ~~arbitration~~ arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and

Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991."

Section 7. Article 45B of Chapter 1 of the General Statutes is amended by adding a new Part to read:

"Part 3. International Commercial Conciliation.

"**§ 1-567.68. Appointment of conciliators.**

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part.

"**§ 1-567.69. Representation.**

The parties may appear in person or be represented or assisted by any person of their choice.

"**§ 1-567.70. Report of conciliators.**

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator.

"**§ 1-567.71. Confidentiality.**

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given. This subsection does not limit the admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled.

"**§ 1-567.72. Stay of arbitration; resort to other proceedings.**

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings.

"**§ 1-567.73. Termination of conciliation.**

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.

(2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.

(3) On the date of the agreement, a conciliation agreement signed by all of the parties.

(4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.

(2) On the date of the agreement, a conciliation agreement signed by some of the parties.

(3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

"**§ 1-567.74. Enforceability of decree.**

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration.

"**§ 1-567.75. Costs.**

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section, 'costs' includes all of the following:

(1) A reasonable fee to be paid to the conciliators.

(2) Travel and other reasonable expenses of the conciliators.

(3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.

(4) The cost of any expert advice requested by the conciliators, with the consent of the parties.

(5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

"**§ 1-567.76. Effect on jurisdiction.**

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails.

"**§ 1-567.77. Immunity of conciliators and parties.**

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall have the same immunity as judges from civil liability for their official conduct in any proceeding subject to this Part. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle."

Section 8. This act becomes effective October 1, 1997, and applies to any international commercial disputes that are subject on or after that date to conciliation pursuant to Article 45B of Chapter 1 of the General Statutes, as amended by this act.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:38 p.m. this 6th day of August, 1997