

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1995**

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**HOUSE BILL 271**

Short Title: Pilot Mediation/Equit. Dist.

(Public)

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Sponsors: Representatives Hackney, Alexander, Braswell, Easterling, McAllister; Bowie, Cummings, Gardner, and Luebke.

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Referred to: Judiciary II, if favorable, Appropriations.

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February 23, 1995

**A BILL TO BE ENTITLED**

**AN ACT TO ESTABLISH A PILOT MEDIATION PROGRAM FOR EQUITABLE DISTRIBUTION UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS, AS RECOMMENDED BY THE LRC STUDY COMMITTEE ON FAMILY ISSUES.**

The General Assembly of North Carolina enacts:

Section 1. There is established a pilot program in judicial districts selected by the Director of the Administrative Office of the Courts in which parties to equitable distribution cases may be required to attend a pretrial settlement conference conducted by a mediator. The purpose of the pilot program is to determine whether mediation helps expedite equitable distribution cases, reduces costs to the litigants, and is a more satisfactory process than litigation.

Sec. 2. This procedure may be implemented in a judicial district or any part of a judicial district if the Director of the Administrative Office of the Courts and the chief district court judge of that district determine that use of this program may assist in achieving objectives stated in Section 1 of this act. The Director of the Administrative Office of the Courts may terminate any pilot program after consultation with the chief district court judge.

1           Sec. 3. The Supreme Court shall adopt rules to implement this act. The  
2 definitions in G.S. 7A-38(b)(2) and (b)(3) apply to this act.

3           Sec. 4. When a petition for equitable distribution is contested in a participating  
4 district, the court shall set the matter for a pretrial mediation of the contested issues  
5 before or concurrent with the setting of the matter for hearing, unless the court  
6 determines that mediation is inappropriate in that case.

7           Sec. 5. The parties have the right to stipulate to a mediator, subject to the  
8 standards and rules adopted by the Supreme Court. Upon failure of the parties to agree  
9 within the time established by the rules, the chief district court judge shall appoint a  
10 mediator.

11           Sec. 6. Either party may move to have the mediator disqualified, due to the  
12 mediator's bias or undue familiarity with a party.

13           Sec. 7. The mediator shall use his or her best efforts to effect a settlement of  
14 the contested issues.

15           Sec. 8. After the mediation, the mediator shall file with the court as soon as  
16 practicable a mediation agreement executed by the parties. The agreement shall explain  
17 what issues were settled during the mediation and how those issues were settled, or it  
18 shall state that the parties failed to settle any issues. The court may incorporate the  
19 agreement into a court order.

20           Sec. 9. Upon failure of a party to attend a court-ordered mediation, the court  
21 may impose any lawful sanction, including the payment of attorneys' fees, mediator fees,  
22 and expenses incurred in attending the conference, contempt, or any other sanction  
23 authorized by G.S. 1A-1, Rule 37(b).

24           Sec. 10. The Supreme Court shall establish standards for the qualification and  
25 conduct of mediators and mediator training programs. Standards for the qualification for  
26 a mediator shall include the following minimum requirements:

- 27           (1) A commission as a notary public under Chapter 10A-3 of the General  
28 Statutes; and
- 29           (2) At least 40 hours of training in mediation techniques by a qualified  
30 instructor of mediation in accordance with rules adopted by the  
31 Supreme Court.

32           Sec. 11. A mediator acting under this legislation has judicial immunity in the  
33 same manner and to the same extent as a judge of the General Court of Justice.

34           Sec. 12. The plaintiff and the defendant shall each pay one half of the costs of  
35 the mediation, unless otherwise ordered by the court or agreed to by the parties. The  
36 rules adopted by the Supreme Court under Section 3 shall set out a method whereby  
37 parties found by the court to be unable to pay the costs of the mediation may participate  
38 without cost.

39           Sec. 13. All conduct or communications made during a mediation are  
40 presumed to be made in compromise negotiations and are governed by Rule 408 of the  
41 North Carolina Rules of Evidence.

1           Sec. 14. The Administrative Office of the Courts shall evaluate the pilot  
2 program and file a report with the General Assembly on or before the convening of the  
3 1999 Session. The pilot program shall terminate April 1, 1999.

4           Sec. 15. Nothing in this act or in the rules promulgated by the Supreme Court  
5 implementing this act shall restrict the right to trial.

6           Sec. 16. The Administrative Office of the Courts may solicit funds from  
7 private sources to establish, conduct, and evaluate this pilot program.

8           Sec. 17. There is appropriated from the General Fund to the Judicial  
9 Department the sum of one hundred ninety thousand four hundred fifteen dollars  
10 (\$190,415) for the 1995-96 fiscal year and the sum of one hundred ninety thousand four  
11 hundred fifteen dollars (\$190,415) for the 1996-97 fiscal year to implement this act.

12           Sec. 18. This act becomes effective October 1, 1995.