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HOUSE BILL 1319
Committee Substitute Favorable 5/4/05
Senate Judiciary II Committee Substitute Adopted 6/21/05

Short Title: Amend Family Law Arbitration Act.

(Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROVISIONS UNDER THE FAMILY LAW
ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 50 of the General Statutes is amended by adding two new sections to read:

"§ 50-42.1. Nonwaivable provisions.

(a) Except as otherwise provided in subsections (b) and (c) of this section or in this Article, a party to an agreement to arbitrate or an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law. Any waiver or agreement must be in writing.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 50-42, 50-49(a), (b), or (c), 50-58, or 50-59.

(2) Agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding under G.S. 50-42.2(a) or (b).

(3) Agree to unreasonably restrict the right to disclosure of any facts by a neutral arbitrator under G.S. 50-45.1.

(c) Except as otherwise provided in this Article, a party to an agreement to arbitrate or an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S. 50-43, 50-45(f), 50-52 through 50-57, or 50-60 through 50-62.

(d) Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate.

"§ 50-42.2. Notice.

(a) A person initiates an arbitration proceeding by giving written notice to the other parties to the agreement to arbitrate in the manner in which the parties have agreed

1 or, in the absence of agreement, by certified or registered mail, return receipt requested,
2 or by service as authorized for the commencement of a civil action under the North
3 Carolina Rules of Civil Procedure.

4 (b) Unless a person objects to the lack or insufficiency of notice not later than the
5 beginning of the hearing, the person's appearance at the hearing waives the objection.

6 (c) Except as otherwise provided in this Article, a person gives notice to another
7 person by taking action that is reasonably necessary to inform the other person in the
8 ordinary course of business, regardless of whether the person acquires knowledge of the
9 notice.

10 (d) A person has notice if the person has knowledge of the notice or has received
11 notice.

12 (e) A person receives notice when it comes to the person's attention or the notice
13 is delivered at the person's place of residence or place of business or at another location
14 held out by the person as a place of delivery of communications."

15 **SECTION 2.** G.S. 50-43(b) reads as rewritten:

16 "(b) Upon the application of a party, the court may stay an arbitration proceeding
17 commenced or threatened on a showing that there is no agreement to arbitrate. This
18 issue, when in substantial and bona fide dispute, shall be immediately and summarily
19 tried and the court shall order a stay if it finds for the moving party. If the court finds for
20 the opposing party, the court shall order the parties to go to arbitration. An arbitrator
21 shall decide whether a condition precedent to arbitrability has been fulfilled and whether
22 a contract containing a valid agreement to arbitrate is enforceable. If a party to a judicial
23 proceeding challenges the existence of, or claims that a controversy is not subject to, an
24 agreement to arbitrate, the arbitration proceeding may continue pending final resolution
25 of the issue by the court unless the court otherwise orders."

26 **SECTION 3.** G.S. 50-44 is amended by adding the following new
27 subsection to read:

28 "(j) A party does not waive the right to arbitrate by proceeding under this
29 section."

30 **SECTION 4.** G.S. 50-45 reads as rewritten:

31 "**§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.**

32 (a) Unless the parties ~~agree otherwise~~, otherwise agree in writing, a single
33 arbitrator shall be chosen by the parties to arbitrate all matters in dispute.

34 (b) If the arbitration agreement provides a method of appointment of arbitrators,
35 this method shall be followed. The agreement may provide for appointing one or more
36 arbitrators. Upon the application of a party, the court shall appoint arbitrators in any of
37 the following situations:

- 38 (1) The method agreed upon by the parties in the arbitration agreement
39 fails or for any reason cannot be followed.
- 40 (2) An arbitrator who has already been appointed fails or is unable to act,
41 and a successor has not been chosen by the parties.
- 42 (3) The parties cannot agree on an arbitrator.

1 (c) Arbitrators appointed by the court have all the powers of those arbitrators
2 specifically named in the agreement. In appointing arbitrators, a court shall consult with
3 prospective arbitrators as to their availability and shall refer to each of the following:

4 (1) The positions and desires of the parties.

5 (2) The issues in dispute.

6 (3) The skill, substantive training, and experience of prospective
7 arbitrators in those issues, including their skill, substantive training,
8 and experience in family law issues.

9 (4) The availability of prospective arbitrators.

10 (d) The parties may agree in writing to employ an established arbitration
11 institution to conduct the arbitration. If the agreement does not provide a method for
12 appointment of arbitrators and the parties cannot agree on an arbitrator, the court may
13 appoint an established arbitration institution the court considers qualified in family law
14 arbitration to conduct the arbitration.

15 (e) The parties may agree in writing on rules for conducting the arbitration. If the
16 parties cannot agree on rules for conducting the arbitration, the arbitrators shall select
17 the rules for conducting the arbitration after hearing all parties and taking particular
18 reference to model rules developed by arbitration institutions or similar sources. If the
19 arbitrators cannot decide on rules for conducting the arbitration, upon application by a
20 party, the court may order use of rules for conducting the arbitration, taking particular
21 reference to model rules developed by arbitration institutions or similar sources.

22 (f) Arbitrators and established arbitration institutions, whether chosen by the
23 parties or appointed by the court, have the same immunity as judges from civil liability
24 for their conduct in the arbitration.

25 (g) "Arbitration institution" means any neutral, independent organization,
26 association, agency, board, or commission that initiates, sponsors, or administers
27 arbitration proceedings, including involvement in appointment of arbitrators.

28 (h) The court may award ~~costs, as provided in G.S. 50-51(f),~~ costs under
29 G.S. 50-51(f) in connection with applications and other proceedings under this section."

30 **SECTION 5.** Article 3 of Chapter 50 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 50-45.1. Disclosure by arbitrator.**

33 (a) Before accepting appointment, an individual who is requested to serve as an
34 arbitrator, after making a reasonable inquiry, shall disclose to all parties to the
35 agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any
36 known facts that a reasonable person would consider likely to affect the impartiality of
37 the arbitrator in the arbitration proceeding, including:

38 (1) A financial or personal interest in the outcome of the arbitration
39 proceeding.

40 (2) An existing or past relationship with any of the parties to the
41 agreement to arbitrate or to the arbitration proceeding, their counsel or
42 representatives, a witness, or other arbitrators.

43 (b) An arbitrator has a continuing obligation to disclose to all parties to the
44 agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any

1 facts that the arbitrator learns after accepting appointment that a reasonable person
2 would consider likely to affect the impartiality of the arbitrator.

3 (c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section
4 to be disclosed and a party timely objects to the appointment or continued service of the
5 arbitrator based upon the fact disclosed, the objection may be grounds for vacating an
6 award made by the arbitrator under G.S. 50-54(a)(2).

7 (d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of
8 this section, upon timely objection by a party, the court may vacate an award pursuant
9 to G.S. 50-54(a)(2).

10 (e) An arbitrator appointed as a neutral arbitrator who does not disclose a known,
11 direct, and material interest in the outcome of the arbitration proceeding or a known,
12 existing, and substantial relationship with a party is presumed to act with evident
13 partiality under G.S. 50-54(a)(2).

14 (f) If the parties to an arbitration proceeding agree to the procedures of an
15 arbitration institution or any other procedures for challenges to arbitrators before an
16 award is made, substantial compliance with those procedures is a condition precedent to
17 a motion to vacate an award on those grounds pursuant to G.S. 50-54(a)(2)."

18 **SECTION 6.** G.S. 50-46 reads as rewritten:

19 **"§ 50-46. Majority action by arbitrators.**

20 The arbitrators' powers shall be exercised by a majority unless otherwise provided
21 by the parties' written arbitration agreement or this Article."

22 **SECTION 7.** G.S. 50-47 reads as rewritten:

23 **"§ 50-47. Hearing.**

24 Unless otherwise provided by the parties' written agreement:

- 25 (1) The arbitrators shall appoint a time and place for the hearing and
26 notify the parties or their counsel by personal service or by registered
27 or certified mail, return receipt requested, not less than five days
28 before the hearing. Appearance of a party at the hearing waives any
29 claim of deficiency of notice. The arbitrators may adjourn the hearing
30 from time to time as necessary and, on request of a party and for good
31 cause shown, or upon their own motion, may postpone the hearing to a
32 time not later than the date fixed by the written agreement for making
33 the award unless the parties consent to a later date. The arbitrators may
34 hear and determine the controversy upon the evidence produced
35 notwithstanding the failure of a party duly notified to appear. Upon
36 application of a party, the court may direct the arbitrators to proceed
37 promptly with the hearing and determination of the controversy.
- 38 (2) The parties are entitled to be heard, to present evidence material to the
39 controversy, and to cross-examine witnesses appearing at the hearing.
- 40 (3) All the arbitrators shall conduct the hearing, but a majority may
41 determine any question and may render a final award. If, during the
42 course of the hearing, an arbitrator for any reason ceases to act, the
43 remaining arbitrators appointed to act as neutrals may continue with
44 the hearing and determination of the controversy.

1 (4) Upon request of any party or at the election of any arbitrator, the
2 arbitrators shall cause to be made a record of testimony and evidence
3 introduced at the hearing. The arbitrators shall decide how the cost of
4 the record will be apportioned."

5 **SECTION 8.** G.S. 50-50 is repealed.

6 **SECTION 9.** Article 3 of Chapter 50 of the General Statutes is amended by
7 adding the following new section to read:

8 "**§ 50-50.1. Consolidation.**

9 (a) Except as otherwise provided in subsection (c) of this section, upon motion of
10 a party to an agreement or arbitration proceeding, the court may order consolidation of
11 separate arbitration proceedings as to all or some of the claims if all of the following
12 apply:

13 (1) There are separate agreements to arbitrate or separate arbitration
14 proceedings between the same parties or one of them is a party to a
15 separate agreement to arbitrate or a separate arbitration with a third
16 party.

17 (2) The claims subject to the agreements to arbitrate arise in substantial
18 part from the same transaction or series of related transactions.

19 (3) The existence of a common issue of law or fact creates the possibility
20 of conflicting decisions in the separate arbitration proceedings.

21 (4) Prejudice resulting from a failure to consolidate is not outweighed by
22 the risk of undue delay or prejudice to the rights of or hardship to
23 parties opposing consolidation.

24 (b) The court may order consolidation of separate arbitration proceedings as to
25 some claims and allow other claims to be resolved in separate arbitration proceedings.

26 (c) The court shall not order consolidation of the claims of a party to an
27 agreement to arbitrate if the agreement prohibits consolidation."

28 **SECTION 10.** G.S. 50-51 reads as rewritten:

29 "**§ 50-51. Award; costs.**

30 (a) The award shall be in writing, dated and signed by the arbitrators joining in
31 the award, with a statement of the place where the arbitration was conducted and the
32 place where the award was made. Where there is more than one arbitrator, the
33 signatures of a majority of the arbitrators suffice, but the reason for any omitted
34 signature shall be stated. The arbitrators shall deliver a copy of the award to each party
35 personally or by registered or certified mail, return receipt requested, or as provided in
36 the parties' written agreement. Time of delivery shall be computed from the date of
37 personal delivery or date of mailing.

38 (b) Unless the parties ~~agree otherwise,~~otherwise agree in writing, the award shall
39 state the reasons upon which it is based.

40 (c) Unless the parties ~~agree otherwise,~~otherwise agree in writing, the arbitrators
41 may award interest as provided by law.

42 (d) The arbitrators in their discretion may award specific performance to a party
43 requesting an award of specific performance when that would be an appropriate remedy.

1 (e) Unless the parties ~~agree otherwise, otherwise~~ agree in writing, the arbitrators
2 may not award punitive damages. If arbitrators award punitive damages, they shall state
3 the award in a record and shall specify facts justifying the award and the amount of the
4 award attributable to punitive damages.

5 (f) Costs:

6 (1) Unless the parties ~~otherwise agree, otherwise~~ agree in writing,
7 awarding of costs of an arbitration shall be in the arbitrators'
8 discretion.

9 (2) In making an award of costs, the arbitrators may include any or all of
10 the following as costs:

11 a. Fees and expenses of the arbitrators, expert witnesses, and
12 translators;

13 b. Fees and expenses of ~~counsel~~ counsel, to the extent allowed by
14 law unless the parties otherwise agree in writing, and of an
15 institution supervising the arbitration, if any;

16 c. Any other expenses incurred in connection with the arbitration
17 proceedings;

18 d. Sanctions awarded by the arbitrators or the court, including
19 those provided by N.C.R. Civ. P. 11 and 37; and

20 e. Costs allowed by Chapters 6 and 7A of the General Statutes.

21 (3) In making an award of costs, the arbitrators shall specify each of the
22 following:

23 a. The party entitled to costs;

24 b. The party who shall pay costs;

25 c. The amount of costs or method of determining that amount; and

26 d. The manner in which costs shall be paid.

27 (g) An award shall be made within the time fixed by the agreement. If no time is
28 fixed by the agreement, the award shall be made within the time the court orders on a
29 party's application. The parties may extend the time in writing either before or after the
30 expiration of this time. A party waives objection that an award was not made within the
31 time required unless that party notifies the arbitrators of his or her objection prior to
32 delivery of the award to that party."

33 **SECTION 11.** G.S. 50-52 reads as rewritten:

34 "**§ 50-52. Change of award by arbitrators.**

35 (a) On a party's application to the arbitrators or, if an application to the court is
36 pending under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the
37 court under the conditions ordered by the court, the arbitrators may modify or correct
38 the award for any of the following reasons:

39 (1) ~~upon~~ Upon grounds stated in G.S. 50-55(a)(1) and (a)(3), subdivisions
40 (1) and (3) of subsection (a) of G.S. 50-55,

41 (2) If the arbitrators have not made a final and definite award upon a claim
42 submitted by the parties to the arbitration proceeding.

43 (3) ~~or~~ To clarify the award.

1 (b) The application shall be made within 20 days after delivery of the award to
2 the opposing party, ~~stating party.~~ The application must include a statement that the
3 opposing party must serve any objections to the application, if any, application within
4 10 days from notice. An award modified or corrected under this section is subject to the
5 provisions of G.S. 50-51(a) through G.S. 50-51(f) and G.S. 50-53 through G.S. 50-56."

6 **SECTION 12.** G.S. 50-53 reads as rewritten:

7 "**§ 50-53. Confirmation of award.**

8 (a) Unless the parties ~~agree otherwise, otherwise agree in writing~~ that part or all
9 of an award shall not be confirmed by the court, upon a party's application, the court
10 shall confirm an award, ~~unless—except when~~ within time limits imposed under
11 G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or
12 correcting the award, in which case the court shall proceed as provided in G.S. 50-54
13 through G.S. 50-56.

14 (b) The court may award costs, as provided in G.S. 50-51(f), of the application
15 and subsequent proceedings."

16 **SECTION 13.** G.S. 50-54(d) reads as rewritten:

17 "(d) The court shall confirm the award and may award costs of the application and
18 subsequent proceedings under G.S. 50-51(f) if ~~If an application to vacate is denied~~
19 ~~and denied,~~ no motion to modify or correct the award is pending, and the parties have
20 not agreed in writing that the award shall not be confirmed under G.S. 50-53. ~~the court~~
21 ~~shall confirm the award and may award costs, as provided in G.S. 50-51(f), of the~~
22 ~~application and subsequent proceedings."~~

23 **SECTION 14.** G.S. 50-56 reads as rewritten:

24 "**§ 50-56. Modification of award for alimony, postseparation support, child**
25 **support, or child custody based on substantial change of circumstances.**

26 (a) A court or the arbitrators may modify an award for postseparation support,
27 alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and
28 G.S. 50-16.9 ~~in accordance with procedures stated as provided in~~ subsections (b)
29 through (f) of this section.

30 (b) Unless the parties have agreed in writing that an award for postseparation
31 support or alimony shall be nonmodifiable, an award by arbitrators for postseparation
32 support or alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be
33 modified if a court order for alimony or postseparation support could be modified
34 ~~pursuant to under~~ G.S. 50-16.9.

35 (c) An award by arbitrators for child support or child custody may be modified if
36 a court order for child support or child custody could be modified ~~pursuant to under~~
37 G.S. 50-13.7.

38 (d) If an award for modifiable postseparation support or alimony, or an award for
39 child support or child custody, has not been confirmed ~~pursuant to under~~ G.S. 50-53,
40 upon the parties' written agreement these matters may be submitted to arbitrators chosen
41 by the parties ~~as provided in G.S. 50-45, in which case under G.S. 50-45.~~ G.S. 50-52
42 through G.S. 50-56 shall apply to this modified award.

43 (e) If an award for modifiable postseparation support or alimony, or an award for
44 child support or child custody has been confirmed pursuant to G.S. 50-53, upon the

1 parties' agreement in writing and joint motion, the court may remit these matters to
2 arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52
3 through G.S. 50-56 apply to this modified award.

4 (f) Except as otherwise provided in this section, the provisions of G.S. 50-55
5 apply to modifications or corrections of awards for postseparation support, alimony,
6 child support, or child custody."

7 **SECTION 15.** G.S. 50-57 reads as rewritten:

8 "**§ 50-57. Orders or judgments on award.**

9 (a) Upon granting an order confirming, modifying, or correcting an award, an
10 order or judgment shall be entered in conformity with the order and docketed and
11 enforced as any other order or judgment. The court may award costs, as provided in
12 G.S. 50-51(f), of the application and of proceedings subsequent to the application and
13 disbursements.

14 (b) Notwithstanding G.S. 7A-109, 7A-276.1, or 132-1 or similar law, the court,
15 in its discretion, may order that any arbitration award or order or any judgment or court
16 order entered as a court order or judgment under this Article, or any part of the
17 arbitration award or order or judgment or court order, be sealed, to be opened only upon
18 order of the court upon good cause shown. Upon good cause shown, the court may
19 order resealing of the opened arbitration awards or orders or judgments or court orders.
20 The court, in its discretion, may order that any arbitration award or order or any
21 judgment or court order entered as a court order or judgment under this Article, or any
22 part of the arbitration award or order or judgment or court order, be redacted, the
23 redactions to be opened only upon order of the court upon good cause shown. Upon
24 good cause shown, the court may order redaction of the previously redacted arbitration
25 awards or orders or judgments or court orders opened under the court's order."

26 **SECTION 16.** G.S. 50-58 reads as rewritten:

27 "**§ 50-58. Applications to the court.**

28 Except as otherwise provided, an application to a court under this Article shall be by
29 motion and shall be heard in the manner and upon notice provided by law or rule of
30 court for making and hearing motions in civil actions. Unless the parties ~~agree~~
31 ~~otherwise,~~ otherwise agree in writing, notice of an initial application for an order shall be
32 served in the manner provided by law for service of summons in civil actions."

33 **SECTION 17.** G.S. 50-59 reads as rewritten:

34 "**§ 50-59. Court; ~~jurisdiction;~~ jurisdiction; other definitions.**

35 (a) The term "court" means a court of competent jurisdiction of this State.
36 Making an agreement in this State described in G.S. 50-42 or any agreement providing
37 for arbitration in this State or under its laws confers jurisdiction on the court to enforce
38 the agreement under this Article and to enter judgment on an award under the
39 agreement.

40 (b) The term 'person' means an individual, corporation, business trust, estate,
41 trust, partnership, limited liability company, association, joint venture, government,
42 governmental subdivision, agency or instrumentality, public corporation, or any other
43 legal or commercial entity."

44 **SECTION 18.** G.S. 50-61 reads as rewritten:

1 **"§ 50-61. Article not retroactive.**

2 This Article applies to agreements made on or after October 1, 1999, unless parties
3 by separate written agreement after that date state that this Article shall apply to
4 agreements dated before October 1, 1999."

5 **SECTION 19.** G.S. 50-62 reads as rewritten:

6 **"§ 50-62. Construction; uniformity of interpretation.**

7 (a) Certain provisions of this Article have been adapted from the Uniform
8 Arbitration Act formerly in force in this State, the Revised Uniform Arbitration Act in
9 force in this State, the North Carolina International Commercial Arbitration and
10 Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes.
11 This Article shall be construed to effect its general purpose to make uniform provisions
12 of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes.

13 (b) The provisions of this Article governing the legal effect, validity, or
14 enforceability of electronic records or electronic signatures, or of contracts performed
15 with the use of these records or signatures, conform to the requirements of section 102
16 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001,
17 et seq., or as otherwise authorized by federal or State law governing these electronic
18 records or electronic signatures."

19 **SECTION 20.** This act becomes effective October 1, 2005, and applies to
20 agreements made on or after that date. This act also applies to agreements to arbitrate
21 made before October 1, 2005, if all parties to the agreement or to the arbitration
22 proceeding agree that this act applies.