

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1319

Short Title: Amend Family Law Arbitration Act. (Public)

Sponsors: Representatives Hackney, Goodwin (Primary Sponsors); and Brown.

Referred to: Judiciary I.

April 20, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS PROVISIONS UNDER THE FAMILY LAW
3 ARBITRATION ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 50-41 reads as rewritten:

6 "**§ 50-41. Purpose; short title; rules on waivers.**

7 (a) It is the policy of this State to allow, by agreement of all parties, the
8 arbitration of all issues arising from a marital separation or divorce, except for the
9 divorce itself, while preserving a right of modification based on substantial change of
10 circumstances related to alimony, child custody, and child support. Pursuant to this
11 policy, the purpose of this Article is to provide for arbitration as an efficient and speedy
12 means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B,
13 and 52C of the General Statutes and similar legislation, to provide default rules for the
14 conduct of arbitration proceedings, and to assure access to the courts of this State for
15 proceedings ancillary to this arbitration.

16 (b) This Article may be cited as the North Carolina Family Law Arbitration Act.

17 (c) Except as otherwise provided in subsections (d) and (e) of this section or in
18 this Article, a party to an agreement to arbitrate or an arbitration proceeding may waive,
19 or the parties may vary the effect of, the requirements of this Article, in writing, to the
20 extent provided by law.

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

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

25 (2) Agree to unreasonably restrict the right to notice of the initiation of an
26 arbitration proceeding under G.S. 50-42(c) or (d).

27 (3) Agree to unreasonably restrict the right to disclosure of any facts by a
28 neutral arbitrator under G.S. 50-45(h) through (m).

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

5 (f) Any waiver contrary to this section shall not be effective and shall have the
6 effect of voiding the agreement to arbitrate."

7 **SECTION 2.** G.S. 50-42 reads as rewritten:

8 "**§ 50-42. Arbitration agreements made valid, irrevocable, and**
9 **enforceable.enforceable; notice standards.**

10 (a) During, or after marriage, parties may agree in writing to submit to arbitration
11 any controversy, except for the divorce itself, arising out of the marital relationship.
12 Before marriage, parties may agree in writing to submit to arbitration any controversy,
13 except for child support, child custody, or the divorce itself, arising out of the marital
14 relationship. This agreement is valid, enforceable, and irrevocable except with both
15 parties' consent, without regard to the justiciable character of the controversy and
16 without regard to whether litigation is pending as to the controversy.

17 (b) This Article does not apply to an agreement to arbitrate in which a provision
18 stipulates that this Article does not apply or to any arbitration or award under an
19 agreement in which a provision stipulates that this Article does not apply.

20 (c) A person initiates an arbitration proceeding by giving written notice to the
21 other parties to the agreement to arbitrate in the manner in which the parties have agreed
22 or, in the absence of agreement, by certified or registered mail, return receipt requested,
23 or by service as authorized for the commencement of a civil action pursuant to the
24 North Carolina Rules of Civil Procedure.

25 (d) Unless a person objects for lack of sufficiency of notice in accordance with
26 G.S. 50-47(1) no later than the beginning of the arbitration hearing, the person, by
27 appearing at the hearing, waives any objection to lack or insufficiency of notice.

28 (e) Except as otherwise provided in this Article, a person gives notice to another
29 person by taking action that is reasonably necessary to inform the other person in the
30 ordinary course of business, regardless of whether the person acquires knowledge of the
31 notice.

32 (f) A person is given notice if the person has knowledge of the notice or has
33 received notice.

34 (g) A person gives actual notice when it comes to the person's attention or the
35 notice is delivered at the person's place of residence or place of business or at another
36 location held out by the person as a place of delivery of communications."

37 **SECTION 3.** G.S. 50-43(b) reads as rewritten:

38 "(b) Upon the application of a party, the court may stay an arbitration proceeding
39 commenced or threatened on a showing that there is no agreement to arbitrate. This
40 issue, when in substantial and bona fide dispute, shall be immediately and summarily
41 tried and the court shall order a stay if it finds for the moving party. If the court finds for
42 the opposing party, the court shall order the parties to go to arbitration. An arbitrator
43 shall decide whether a condition precedent to arbitrability has been fulfilled and whether
44 a contract containing a valid agreement to arbitrate is enforceable. If a party to a judicial

1 proceeding challenges the existence of, or claims that a controversy is not subject to, an
2 agreement to arbitrate, the arbitration proceeding may continue pending final resolution
3 of the issue by the court unless the court otherwise orders."

4 **SECTION 4.** G.S. 50-44 is amended by adding the following new
5 subsection to read:

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

8 **SECTION 5.** G.S. 50-45 reads as rewritten:

9 "**§ 50-45. Appointment of arbitrators; rules for conducting the**
10 **~~arbitration.~~arbitration; disclosure.**

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

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

17 (1) The method agreed upon by the parties in the arbitration agreement
18 fails or for any reason cannot be followed.

19 (2) An arbitrator who has already been appointed fails or is unable to act,
20 and a successor has not been chosen by the parties.

21 (3) The parties cannot agree on an arbitrator.

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

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

26 (2) The issues in dispute.

27 (3) The skill, substantive training, and experience of prospective
28 arbitrators in those issues, including their skill, substantive training,
29 and experience in family law issues.

30 (4) The availability of prospective arbitrators.

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

36 (e) The parties may agree in writing on rules for conducting the arbitration. If the
37 parties cannot agree on rules for conducting the arbitration, the arbitrators shall select
38 the rules for conducting the arbitration after hearing all parties and taking particular
39 reference to model rules developed by arbitration institutions or similar sources. If the
40 arbitrators cannot decide on rules for conducting the arbitration, upon application by a
41 party, the court may order use of rules for conducting the arbitration, taking particular
42 reference to model rules developed by arbitration institutions or similar sources.

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

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

7 (g1) Before accepting appointment, an individual who is requested to serve as an
8 arbitrator, after making a reasonable inquiry, shall disclose to all parties to the
9 agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any
10 known facts that a reasonable person would consider likely to affect the impartiality of
11 the arbitrator in the arbitration proceeding, including:

12 (1) A financial or personal interest in the outcome of the arbitration
13 proceeding.

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

17 (g2) An arbitrator has a continuing obligation to disclose to all parties to the
18 agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any
19 facts that the arbitrator learns after accepting appointment that a reasonable person
20 would consider likely to affect the impartiality of the arbitrator.

21 (g3) If an arbitrator discloses a fact required by subsection (g1) or (g2) of this
22 section to be disclosed and a party timely objects to the appointment or continued
23 service of the arbitrator based upon the fact disclosed, the objection may be grounds for
24 vacating an award made by the arbitrator under G.S. 50-54(a)(2).

25 (g4) If the arbitrator did not disclose a fact as required by subsection (g1) or (g2)
26 of this section, upon timely objection by a party, the court may vacate an award
27 pursuant to G.S. 50-54(a)(2).

28 (g5) An arbitrator appointed as a neutral arbitrator who does not disclose a known,
29 direct, and material interest in the outcome of the arbitration proceeding or a known,
30 existing, and substantial relationship with a party is presumed to act with evident
31 partiality under G.S. 50-54(a)(2).

32 (g6) If the parties to an arbitration proceeding agree to the procedures of an
33 arbitration institution or any other procedures for challenges to arbitrators before an
34 award is made, substantial compliance with those procedures is a condition precedent to
35 a motion to vacate an award on those grounds pursuant to G.S. 50-54(a)(2).

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

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

39 **"§ 50-46. Majority action by arbitrators.**

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

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

43 **"§ 50-47. Hearing.**

44 Unless otherwise provided by the parties' written agreement:

- 1 (1) The arbitrators shall appoint a time and place for the hearing and
2 notify the parties or their counsel by personal service or by registered
3 or certified mail, return receipt requested, not less than five days
4 before the hearing. Appearance at the hearing waives any claim of
5 deficiency of notice. The arbitrators may adjourn the hearing from
6 time to time as necessary and, on request of a party and for good cause
7 shown, or upon their own motion, may postpone the hearing to a time
8 not later than the date fixed by the written agreement for making the
9 award unless the parties consent to a later date. The arbitrators may
10 hear and determine the controversy upon the evidence produced
11 notwithstanding the failure of a party duly notified to appear. Upon
12 application of a party, the court may direct the arbitrators to proceed
13 promptly with the hearing and determination of the controversy.
- 14 (2) The parties are entitled to be heard, to present evidence material to the
15 controversy, and to cross-examine witnesses appearing at the hearing.
- 16 (3) All the arbitrators shall conduct the hearing, but a majority may
17 determine any question and may render a final award. If, during the
18 course of the hearing, an arbitrator for any reason ceases to act, the
19 remaining arbitrators appointed to act as neutrals may continue with
20 the hearing and determination of the controversy.
- 21 (4) Upon request of any party or at the election of any arbitrator, the
22 arbitrators shall cause to be made a record of testimony and evidence
23 introduced at the hearing. The arbitrators shall decide how the cost of
24 the record will be apportioned."

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

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

28 "**§ 50-50A. Consolidation.**

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

- 33 (1) There are separate agreements to arbitrate or separate arbitration
34 proceedings between the same parties or one of them is a party to a
35 separate agreement to arbitrate or a separate arbitration with a third
36 party.
- 37 (2) The claims subject to the agreements to arbitrate arise in substantial
38 part from the same transaction or series of related transactions.
- 39 (3) The existence of a common issue of law or fact creates the possibility
40 of conflicting decisions in the separate arbitration proceedings.
- 41 (4) Prejudice resulting from a failure to consolidate is not outweighed by
42 the risk of undue delay or prejudice to the rights of or hardship to
43 parties opposing consolidation.

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

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

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

6 **"§ 50-51. Award; costs.**

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

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

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

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

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

25 (f) Costs:

26 (1) Unless the parties ~~otherwise agree,~~otherwise agree in writing,
27 awarding of costs of an arbitration shall be in the arbitrators'
28 discretion.

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

31 a. Fees and expenses of the arbitrators, expert witnesses, and
32 translators;

33 b. Fees and expenses of ~~counsel-counsel,~~ to the extent allowed by
34 law unless the parties otherwise agreed in writing, and of an
35 institution supervising the arbitration, if any;

36 c. Any other expenses incurred in connection with the arbitration
37 proceedings;

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

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

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

43 a. The party entitled to costs;

44 b. The party who shall pay costs;

- 1 c. The amount of costs or method of determining that amount; and
2 d. The manner in which costs shall be paid.

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

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

10 **"§ 50-52. Change of award by arbitrators.**

11 On a party's application to the arbitrators or, if an application to the court is pending
12 under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court
13 under the conditions ordered by the court, the arbitrators may modify or correct the
14 award upon grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 50-55, if
15 the arbitrators had not made a final and definite award upon a claim submitted by the
16 parties to the arbitration proceeding, or to clarify the award. The application shall be
17 made within 20 days after delivery of the award to the opposing party, stating that the
18 opposing party must serve objections to the application, if any, within 10 days from
19 notice. An award modified or corrected under this section is subject to the provisions of
20 G.S. 50-51(a) through G.S. 50-51(f) and G.S. 50-53 through G.S. 50-56."

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

22 **"§ 50-53. Confirmation of award.**

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

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

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

32 "(d) If an application to vacate is ~~denied—~~ and denied, no motion to modify or
33 correct the award is pending, and the parties have not agreed in writing that the award
34 shall not be confirmed as provided in G.S. 50-53, the court shall confirm the award and
35 may award costs, as provided in G.S. 50-51(f), of the application and subsequent
36 proceedings."

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

38 **"§ 50-56. Modification of award for alimony, postseparation support, child**
39 **support, or child custody based on substantial change of circumstances.**

40 (a) A court or the arbitrators may modify an award for postseparation support,
41 alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and
42 G.S. 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this
43 section.

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

6 (c) An award by arbitrators for child support or child custody may be modified if
7 a court order for child support or child custody could be modified pursuant to
8 G.S. 50-13.7.

9 (d) If an award for modifiable postseparation support or alimony, or an award for
10 child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the
11 parties' agreement in writing these matters may be submitted to arbitrators chosen by the
12 parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to
13 this modified award.

14 (e) If an award for modifiable postseparation support or alimony, or an award for
15 child support or child custody has been confirmed pursuant to G.S. 50-53, upon the
16 parties' agreement in writing and joint motion, the court may remit these matters to
17 arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52
18 through G.S. 50-56 apply to this modified award.

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

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

23 "**§ 50-57. Orders or judgments on award.**

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

29 (b) Notwithstanding G.S. 7A-109, 7A-276.1, or 132-1 or similar law, the court,
30 in its discretion, may order that any arbitration award or order or any judgment or court
31 order entered as a court order or judgment pursuant to this Article, or any part of the
32 arbitration award or order or judgment or court order, be sealed, to be opened only upon
33 order of the court upon good cause shown. Upon good cause shown, the court may
34 order resealing of the opened arbitration awards or orders or judgments or court orders.
35 The court in its discretion may order that any arbitration award or order or any judgment
36 or court order entered as a court order or judgment pursuant to this Article, or any part
37 of the arbitration award or order or judgment or court order, be redacted, the redactions
38 to be opened only upon order of the court upon good cause shown. Upon good cause
39 shown, the court may order redaction of the previously redacted arbitration awards or
40 orders or judgments or court orders opened pursuant to the court's order."

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

42 "**§ 50-58. Applications to the court.**

43 Except as otherwise provided, an application to a court under this Article shall be by
44 motion and shall be heard in the manner and upon notice provided by law or rule of

1 court for making and hearing motions in civil actions. Unless the parties agree
2 ~~otherwise, otherwise agree in writing,~~ notice of an initial application for an order shall be
3 served in the manner provided by law for service of summons in civil actions."

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

5 "**§ 50-59. Court; ~~jurisdiction;~~ jurisdiction; other definitions.**

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

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

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

16 "**§ 50-61. Article not retroactive.**

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

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

21 "**§ 50-62. Construction; uniformity of interpretation.**

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

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

34 **SECTION 20.** This act is effective when it becomes law.