

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 371

Short Title: International Commercial Conciliation.

(Public)

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Sponsors: Senators Odom; and Rand.

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Referred to: Judiciary.

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March 11, 1997

A BILL TO BE ENTITLED

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

1 encourage the use of arbitration or conciliation as a means of resolving such disputes, to  
2 provide rules for the conduct of arbitration or conciliation proceedings, and to assure  
3 access to the courts of this State for legal proceedings ancillary to such ~~arbitration.~~  
4 arbitration or conciliation. This Article shall be known as the North Carolina  
5 International Commercial Arbitration and Conciliation Act".

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

7 "**§ 1-567.31. Scope of application.**

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

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

13 (c) An arbitration or conciliation, respectively, is international if:

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

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

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

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

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

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

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

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

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

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

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

36 (2) A distribution agreement;

37 (3) A commercial representation or agency;

38 (4) An exploitation agreement or concession;

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

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

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

- 1 (8) The transfer of data or technology;  
2 (9) The use or transfer of intellectual or industrial property, including trade  
3 secrets, trademarks, trade names, patents, copyrights, and software  
4 programs;  
5 (10) A contract for the provision of any type of professional service, whether  
6 provided by an employee or an independent contractor.

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

11 (g) This Article shall not apply to any agreement providing explicitly that it shall  
12 not be subject to the North Carolina International Commercial Arbitration and  
13 Conciliation Act. This Article shall not apply to any agreement executed prior to June  
14 13, 1991."

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

17 **"PART 3. INTERNATIONAL COMMERCIAL CONCILIATION.**

18 **"§ 1-567.68. Appointment of conciliators.**

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

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

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

32 **"§ 1-567.69. Representation.**

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

35 **"§ 1-567.70. Report of conciliators.**

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

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

41 **"§ 1-567.71. Confidentiality.**

42 (a) Evidence of anything said or of an admission made in the course of a  
43 conciliation is not admissible, and disclosure of that evidence shall not be compelled in

1 any arbitration or civil action in which, under law, testimony may be compelled to be  
2 given. This subsection does not limit the admissibility of evidence when all parties  
3 participating in conciliation consent to its disclosure.

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

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

11 **"§ 1-567.72. Stay of arbitration; resort to other proceedings.**

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

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

20 **"§ 1-567.73. Termination of conciliation.**

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

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

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

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

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

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

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

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

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

41 **"§ 1-567.74. Enforceability of decree.**

42 If the conciliation proceeding settles the dispute and the result of the conciliation is in  
43 writing and signed by the conciliators and the parties or their representatives, the written

1 agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this  
2 Article and has the same force and effect as a final award in arbitration.

3 **"§ 1-567.75. Costs.**

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

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

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

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

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

13 (5) The cost of any court.

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

17 **"§ 1-567.76. Effect on jurisdiction.**

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

21 **"§ 1-567.77. Immunity of conciliators and parties.**

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

25 (b) A person who serves as a conciliator shall not be held liable in an action for  
26 damages resulting from any act or omission in the performance of that individual's role as  
27 a conciliator in any proceeding subject to this Part."

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