



# HOUSE BILL 772: Amend NC Int'l Arbitration/Conciliation Act.

2017-2018 General Assembly

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| <b>Committee:</b> House Judiciary IV                          | <b>Date:</b> April 25, 2017    |
| <b>Introduced by:</b> Reps. Destin Hall, Grange, Rogers, John | <b>Prepared by:</b> Jeremy Ray |
| <b>Analysis of:</b> First Edition                             | Committee Co-Counsel           |

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**OVERVIEW:** *House Bill 772 would make conforming and modernizing changes to the International Commercial Arbitration and Conciliation Act (ICACA), to reflect similar trends in international arbitration, and to more closely align Article 45B of the General Statutes with other North Carolina statutes governing arbitration.*

**CURRENT LAW:** Article 45B of the General Statutes applies to arbitrations of international trade and commerce. The purpose of Article 45B is to promote and facilitate international trade and commerce and to provide a forum for the resolution of disputes that may arise from such participation. Article 45B provides rules for the conduct of arbitration or conciliation proceedings, and assures access to the courts of this State for related ancillary legal proceedings.

**BILL ANALYSIS:** This bill would amend the statutes governing international arbitration and conciliation as follows:

- Modify certain terms and definitions; including:
  - Define "Record" as information inscribed on a tangible medium or that is stored in an electronic or other medium.
    - Add "in a record" and "parties in a record" throughout the Article to eliminate the use of information derived from oral agreements where applicable.
  - Add "water" to the list of commercial relationships involving the carriage of goods or passengers, to capture relationships involving river and lake transport.
  - Define "Court" as a court of competent jurisdiction in this State.
    - Change "superior court" to "court" throughout the Article to broaden definition and include business court and parties not under the jurisdiction of the Superior court.
  - Include electronic transmission as a valid form of communication or submission in addition to facsimile.
- Add an exception to the scope of application for voluntary arbitrations of negligent health care claims.
- Replace **G.S. 1-567.42. Grounds for challenge.** and **G.S. 1-567.43. Challenge procedure.** with a new section entitled **G.S. 1-567.43A. Disclosure by arbitrator.**
  - Require arbitrators after making a reasonable inquiry, to disclose to all parties, any known facts a reasonable person would consider likely to affect the impartiality of the

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arbitrator. This includes financial or personal interests or existing or past relationships with any of the parties.

- Require that arbitrators have a continuing duty to disclose any new information after accepting appointment.
  - A timely objection may be a ground for vacating an award made by the arbitrator.
  - Any arbitrator who fails to disclose a known, direct, and material interest is presumed to have acted with partiality.
  - Substantial compliance with procedures of an institution agreed upon by the parties is a condition precedent to a motion to vacate an award under that ground.
- Add new language to ensure the court retains power to issue an interim measure in an arbitration proceeding and that an arbitration agreement does not infringe upon the court's authority to issue interim measures.
  - Add requirement that an arbitral tribunal selects rules for conducting the arbitration after hearing all the parties and taking particular reference to model rules developed by arbitration institutions or similar sources. Language is substantially similar to model language found under G.S. 50-45(e).
  - Reorganizes language into a new subsection to provide the court with the authority to consolidate separate arbitration proceedings upon motion of a party when all of the following conditions are true:
    - Separate arbitration agreements or separate arbitral proceedings between same parties, or one of the parties is a party to a separate agreement to arbitrate or a separate arbitration with a third person.
    - Claims arise in substantial part from the same transaction, or series of related transactions.
    - Common issue of law or fact creates possibility of conflicting decisions.
    - Prejudice from failure to consolidate is not outweighed by risk of undue delay or prejudice to the rights of, or hardship to parties opposing consolidation.

The court may also order consolidation of separate arbitral proceedings as to some claims and allow other claims to be resolved in separate arbitral proceedings and may not order consolidation if it is prohibited in the agreement

- Require that an award by an arbitrator, or arbitrators, is to be made within the time specified by the agreement, or the arbitration institution; and if not so specified, by the court. The court may extend, or the parties to the proceeding may agree in writing, to extend the time.
- Allow an arbitral tribunal to award punitive damages or other relief if all of the following are true:
  - The agreement provides for punitive damages.
  - An award for punitive damages or other relief is authorized by law in a civil action involving the same claim.
  - Evidence at the hearing justifies the award under the legal standards otherwise applicable to the claim.

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If punitive damages are allowed, the arbitral tribunal must specify the basis in fact justifying and the basis in law authorizing the award.

- Allow a court to seal, or redact, in whole or in part, an order, judgment, or award. This includes opening a sealed or redacted order, judgment, or award; and/or sealing or redacting an opened order, judgment, or award.

Add a subsection promoting the application and construing of this Article in uniformity with the Revised Uniform Arbitration Act.

Provide that portions of this Article pertaining to electronic records or electronic signatures conform to federal requirements regulating electronic signatures in global and national commerce.

**EFFECTIVE DATE:** This act becomes effective October 1, 2017, and applies to agreements entered into, renewed, or modified on or after that date.