



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

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 30, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Jeremy Ray
<b>Analysis of:</b>	S.L. 2017-171		Staff Attorney

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**OVERVIEW:** *S.L. 2017-171 makes 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.*

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

**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 act amends the statutes governing international arbitration and conciliation as follows:

**Agreements in Writing.** – Under current law, the parties to an arbitration proceeding are permitted to deviate from certain statutory defaults by mutual agreement, such as the scope of the subject matter of the arbitration, what constitutes "receipt" of documents or submissions, and the availability of interim relief. However, there is no express statutory requirement that these requirements be in writing. This act requires that these agreements be in a "record," which means they must be in a written format. Specifically, the act defines "record" as information inscribed on a tangible medium or that is stored in an electronic or other medium. The addition of this requirement will eliminate the use of oral agreements where applicable.

**"Commercial" Arbitration.** – Under current law, the carriage of good or passengers includes sea transport, but does not specifically include river and lake transport. This act clarifies that arbitration or reconciliation is deemed commercial if it involves the carriage of goods or passengers by sea, or water; thus capturing relationships involving river and lake transport.

**Voluntary Arbitrations of Negligent Health Care Claims.** – Under current law, voluntary arbitrations of negligent health care claims are covered under Article 1H of Chapter 90. This act makes conforming changes which more closely align with language found in the North Carolina Revised Uniform Arbitration Act to reflect that voluntary arbitrations of negligent health care claims are not covered under Article 45B.

**Courts.** – Under current law, judicial proceedings arising out of Article 45B arbitrations take place in superior court. This act expands judicial jurisdiction over these proceedings to include *any* court of competent jurisdiction in this State.

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**Electronic Communications.** – Under current law, electronic transmissions, such as emails, are not considered an acceptable form of delivery under Article 45B. This act now includes electronic transmissions as an acceptable form of delivery under the Article.

**Mandatory Disclosures Affecting Impartiality.** – Under current law, an arbitrator must disclose any information that might affect the arbitrator's impartiality in the proceeding. This act makes conforming changes similar to language found in the North Carolina Revised Uniform Arbitration Act, by combining sections "Grounds for challenge" and "Challenge procedure" under former Article 45B, into a new section entitled "Disclosure by Arbitrator." This new section still requires 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 arbitrator. Under current law, a party who challenges an arbitrator's impartiality may seek a decision on the challenge from the arbitral tribunal followed by an appeal to superior court. This act removes a party's right to challenge the impartiality of an arbitrator, but provides that a party's objection may be the basis for vacating an award.

**Interim Measures by Court.** – Under current law, a party does not have a right to seek interim relief from the court, except that they may ask the court to enforce an order of an arbitral tribunal granting interim measures. This act now affirms that the court retains the same power to issue an interim measure in an arbitration proceeding, as it has in a court proceeding, and that an arbitration agreement does not infringe upon the court's authority to issue interim measures.

**Determination of Rules.** – Under current law, an arbitral tribunal may conduct an arbitration in a manner it finds appropriate, without first hearing from the parties and considering applicable model rules. This section now more closely tracks with related model rules under the Family Law Arbitration Act, which requires that an arbitral tribunal select rules for conducting the arbitration after hearing from all of the parties, while taking particular reference to other model rules. Further, under this Act, if the tribunal is unable to decide on rules, upon application by a party, the court may now order the use of rules for conducting the arbitration.

**Consolidation.** – Under current law, if the parties to two or more arbitration agreements agree in their respective arbitration agreements or otherwise to consolidate the arbitrations arising out of the agreements, the court may order consolidation on its own terms; appoint an arbitral tribunal if the parties cannot agree; and other matters the parties cannot agree on. This act now provides the court with the authority to consolidate separate arbitration proceedings as to all or some of the claims upon motion of a party when certain conditions are met.

**Awards.** – This act makes the following changes with respect to awards:

- Under current law, there is no express statutory limit specifying when an award is to be made pursuant to an arbitration. This act now requires that an award by an arbitrator 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.
- Under current law, there is no express statutory language authorizing punitive damages by an arbitral tribunal. This act allows an arbitral tribunal to award punitive damages or exemplary relief when certain conditions are met. If punitive damages are allowed, the arbitral tribunal must specify the basis in fact justifying and the basis in law authorizing the award.
- Under current law, there is no express statutory language authorizing the redaction of an order, judgement, or award under Article 45B. This act allows a court to seal, or redact, in

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whole or in part, an order, judgment, or award. This includes opening a sealed or redacted order, judgment, or award.

*Miscellaneous.* – The act promotes the application and construing of the Article in uniformity with the Revised Uniform Arbitration Act, and provides that portions of Article 45B pertaining to electronic records or electronic signatures conform to federal requirements regulating electronic signatures in global and national commerce.