

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 371
Judiciary Committee Substitute Adopted 4/30/97

Short Title: International Commercial Conciliation.

(Public)

Sponsors:

Referred to:

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION
3 ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

4 The General Assembly of North Carolina enacts:

5 Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads
6 as rewritten:

7 "International Commercial Arbitration and Conciliation."

8 Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of
9 Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions".

10 Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in
11 Part 1 of Article 45B of Chapter 1 of the General Statutes, as codified in Section 2 of this
12 act.

13 Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of
14 Article 45B of Chapter 1 of the General Statutes, to be entitled "International
15 Commercial Arbitration".

16 Section 5. G.S. 1-567.30 reads as rewritten:

17 "**§ 1-567.30. Preamble and short title.**

18 It is the policy of the State of North Carolina to promote and facilitate international
19 trade and commerce, and to provide a forum for the resolution of disputes that may arise

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

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

8 **"§ 1-567.31. Scope of application.**

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

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

14 (c) An arbitration or conciliation is international if:

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

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

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

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

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

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

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

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

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

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

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

37 (2) A distribution agreement;

38 (3) A commercial representation or agency;

39 (4) An exploitation agreement or concession;

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

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

- 1 (7) A contract or agreement relating to construction, insurance, licensing,
2 factoring, leasing, consulting, engineering, financing, or banking;
3 (8) The transfer of data or technology;
4 (9) The use or transfer of intellectual or industrial property, including trade
5 secrets, trademarks, trade names, patents, copyrights, and software
6 programs;
7 (10) A contract for the provision of any type of professional service, whether
8 provided by an employee or an independent contractor.

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

13 (g) This Article shall not apply to any agreement providing explicitly that it shall
14 not be subject to the North Carolina International Commercial Arbitration and
15 Conciliation Act. This Article shall not apply to any agreement executed prior to June
16 13, 1991."

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

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

20 **"§ 1-567.68. Appointment of conciliators.**

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

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

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

34 **"§ 1-567.69. Representation.**

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

37 **"§ 1-567.70. Report of conciliators.**

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

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

43 **"§ 1-567.71. Confidentiality.**

1 (a) Evidence of anything said or of an admission made in the course of a
2 conciliation is not admissible, and disclosure of that evidence shall not be compelled in
3 any arbitration or civil action in which, under law, testimony may be compelled to be
4 given. This subsection does not limit the admissibility of evidence when all parties
5 participating in conciliation consent to its disclosure.

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

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

13 **"§ 1-567.72. Stay of arbitration; resort to other proceedings.**

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

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

22 **"§ 1-567.73. Termination of conciliation.**

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

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

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

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

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

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

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

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

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

43 **"§ 1-567.74. Enforceability of decree.**

1 If the conciliation proceeding settles the dispute and the result of the conciliation is in
2 writing and signed by the conciliators and the parties or their representatives, the written
3 agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this
4 Article and has the same force and effect as a final award in arbitration.

5 **"§ 1-567.75. Costs.**

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

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

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

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

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

15 (5) The cost of any court.

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

19 **"§ 1-567.76. Effect on jurisdiction.**

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

23 **"§ 1-567.77. Immunity of conciliators and parties.**

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

27 (b) A person who serves as a conciliator shall have the same immunity as judges
28 from civil liability for their official conduct in any proceeding subject to this Part. This
29 qualified immunity does not apply to acts or omissions which occur with respect to the
30 operation of a motor vehicle."

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