

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

2

HOUSE BILL 1319  
Committee Substitute Favorable 5/4/05

Short Title: Amend Family Law Arbitration Act.

(Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROVISIONS UNDER THE FAMILY LAW  
ARBITRATION ACT.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

(3) Agree to unreasonably restrict the right to disclosure of any facts by a 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 but shall not have  
6 the 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          "**§ 50-50.1. 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 agree 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  
36 judgment or court order entered as a court order or judgment pursuant to this Article, or  
37 any part of the arbitration award or order or judgment or court order, be redacted, the  
38 redactions to be opened only upon order of the court upon good cause shown. Upon  
39 good cause shown, the court may order redaction of the previously redacted arbitration  
40 awards or 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,  
32 et seq., or as otherwise authorized by federal or State law governing these electronic  
33 records or electronic signatures."

34 **SECTION 20.** This act becomes effective October 1, 2005, and applies to  
35 agreements made on or after that date. This act also applies to agreements to arbitrate  
36 made before October 1, 2005, if all parties to the agreement or to the arbitration  
37 proceeding agree that this act applies.