

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 1671

Short Title: Arbitration/Negligent Health Care Actions. (Public)

Sponsors: Representatives England, Glazier, Rapp, Allen (Primary Sponsors); Barnhart, Bordsen, Brisson, Carney, Current, Farmer-Butterfield, Fisher, Goforth, Harrison, Justus, McGee, Ross, Steen, Thomas, R. Warren, and Wilkins.

Referred to: Health, if favorable, Judiciary I.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1H. Voluntary Arbitration for Actions for Negligent Health Care Claims.

"§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.

(a) This Article applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) Any contract or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable.

"§ 90-21.61. Requirements for submitting to arbitration.

(a) Initial Election. – Parties to an action covered under G.S. 90-21.60 may elect to submit the dispute to arbitration under this Article only in accordance with the requirements in this section. A claimant may elect to submit the dispute to arbitration under this Article by including such election in the complaint filed at the commencement of the action, and a defendant may elect to submit the dispute to arbitration under this Article by including such election in the defendant's answer to the complaint. The dispute shall be submitted to arbitration under this Article only if all parties to the action elect to submit the dispute to arbitration.

1 (b) Subsequent Election. – If the parties do not initially elect to submit the
2 dispute to arbitration under subsection (a) of this section, the parties may,
3 notwithstanding the declaration under subsection (c) of this section, make such an
4 election at any time during the pendency of the action by filing a stipulation with the
5 court in which all parties to the action agree to submit the dispute to arbitration under
6 this Article.

7 (c) Declaration to Not Arbitrate. – A party that does not initially elect to submit a
8 dispute to arbitration under subsection (a) of this section shall file a declaration with the
9 court that meets one of the following requirements:

10 (1) In the case of a claimant, the declaration shall be filed at the time of
11 commencing the action and shall state that the attorney representing
12 the claimant presented the claimant with a copy of the provisions of
13 this Article before commencing the action and that the claimant
14 elected not to submit the dispute to arbitration under this Article.

15 (2) In the case of a defendant, the declaration shall be filed at the time of
16 filing the answer and shall state that the attorney representing the
17 defendant presented the defendant with a copy of the provisions of this
18 Article before filing the defendant's answer and that the defendant
19 elected not to submit the dispute to arbitration under this Article.

20 **"§ 90-21.62. Selection of arbitrator.**

21 (a) Selection by Agreement. – An arbitrator shall be selected by agreement of the
22 parties no later than 45 days after: (i) the date all defendants elected arbitration in the
23 answer where the parties elected arbitration in the initial complaint and answer, or (ii)
24 the date of the stipulation where the parties agreed to enter into arbitration after the
25 commencement of the action through a stipulation filed with the court. The parties may
26 agree to select more than one arbitrator to conduct the arbitration.

27 (b) Selection by the Court. – If the parties are unable to agree to an arbitrator by
28 the time specified in subsection (a) of this section, each side may submit the names of
29 three arbitrators to the court, and the court shall select an arbitrator from among the
30 submitted names within 15 days of being notified that the parties are unable to agree to
31 an arbitrator. If none of the parties submit any names of potential arbitrators, the court
32 shall select an arbitrator.

33 **"§ 90-21.63. Witnesses; discovery; depositions; subpoenas.**

34 (a) The arbitrator may conduct the arbitration in such manner as the arbitrator
35 considers appropriate so as to aid in the fair and expeditious disposition of the
36 proceeding subject to the requirements of this section and G.S. 90-21.64. Except as
37 provided in subsection (b) of this section, each side shall be entitled to two experts on
38 the issue of liability, two experts on the issue of damages, and one rebuttal expert.

39 (b) Where there are multiple parties on one side, the arbitrator shall determine the
40 number of experts that are allowed based on the minimum number of experts necessary
41 to ensure a fair and economic resolution of the action.

42 (c) Unless the arbitrator determines that exceptional circumstances require
43 additional discovery, each party shall be entitled to all of the following discovery from
44 any other party:

- 1 (1) Twenty-five interrogatories, including subparts.
2 (2) Ten requests for admission.
3 (3) Whatever is allowed under applicable court rules for:
4 a. Requests for production of documents and things, and for entry
5 upon land for inspection and other purposes; and
6 b. Requests for physical and mental examinations of persons.
7 (d) Each party shall be entitled to all of the following depositions:
8 (1) Depositions of any party and any expert that a party expects to call as a
9 witness. – Except by order of the arbitrator for good cause shown, the
10 length of the deposition of a party or an expert witness under this
11 subdivision shall be limited to four hours.
12 (2) Depositions of other witnesses. – Unless the arbitrator determines that
13 exceptional circumstances require additional depositions, the total
14 number of depositions of persons under this subdivision shall be
15 limited to five depositions per side, each of which shall last no longer
16 than two hours and for which each side shall be entitled to examine for
17 one hour.
18 (e) An arbitrator may issue a subpoena for the attendance of a witness and for the
19 production of records and other evidence at any hearing and may administer oaths. A
20 subpoena shall be served in the manner for service of subpoenas in a civil action and,
21 upon the motion to the court by a party to the arbitration proceeding or by the arbitrator,
22 enforced in the manner for enforcement of subpoenas in a civil action.

23 **"§ 90-21.64. Time limitations for arbitration.**

24 (a) The time frames provided in this section shall run from the date all
25 defendants have agreed to arbitration in their answers where the parties elected
26 arbitration in the initial complaint and answer, and from the date of the execution of the
27 stipulation where the parties agreed to enter into arbitration after the commencement of
28 the action through a stipulation filed with the court. An arbitration under this Article
29 shall be conducted according to the time frames as follows:

- 30 (1) Within 45 days, the claimant shall provide stipulations for all relevant
31 medical records to the defendants.
32 (2) Within 120 days, the claimant shall disclose to each defendant the
33 names and curriculum vitae or other documentation of qualifications of
34 any expert the claimant expects to call as a witness.
35 (3) Within 140 days, each defendant shall disclose to the claimant the
36 names and curriculum vitae or other documentation of qualifications of
37 any expert the defendant expects to call as a witness.
38 (4) Within 160 days, each party shall disclose to each other party the name
39 and curriculum vitae or other documentation of qualifications of any
40 rebuttal expert the party expects to call as a witness.
41 (5) Within 240 days, all discovery shall be completed.
42 (6) Within 270 days, the arbitration hearing shall commence.

1 (b) The arbitrator shall issue a case scheduling order in every proceeding
2 specifying the dates by which the requirements of subdivisions (2) through (6) of
3 subsection (a) of this section shall be completed.

4 (c) It is the express public policy of the General Assembly that arbitration
5 hearings under this Article be commenced no later than 10 months after the parties elect
6 to submit the dispute to arbitration. The arbitrator may grant a continuance of the
7 commencement of the arbitration hearing only where a party shows that exceptional
8 circumstances create an undue and unavoidable hardship on the party.

9 **"§ 90-21.65. Written decision by arbitration.**

10 (a) The arbitrator shall issue a decision in writing and signed by the arbitrator
11 within 14 days after the completion of the arbitration hearing and shall promptly deliver
12 a copy of the decision to each party or the party's attorneys.

13 (b) The arbitrator shall not make an award of damages under this Article that
14 exceeds one million dollars (\$1,000,000) for both economic and noneconomic damages.

15 (c) The arbitrator shall not make an award of damages under this Article under a
16 theory of ostensible agency liability.

17 (d) If the arbitrator makes an award of damages to the claimant, the arbitrator
18 shall make a finding as to whether the claimant suffered serious mental or physical
19 injury as a result of the professional negligence of any defendant.

20 (e) The arbitrator may make a finding as to whether a claim, counterclaim,
21 cross-claim, or defense advanced by a party was for an improper purpose.

22 (f) The arbitrator shall review the reasonableness of each party's attorneys' fees.

23 (g) The fees and expenses of the arbitrator shall be paid by the nonprevailing
24 parties.

25 **"§ 90-21.66. Judgment by court.**

26 After a party to the arbitration proceeding receives notice of a decision, the party
27 may file a motion with the court for a judgment in accordance with the decision, at
28 which time the court shall issue such a judgment unless the decision is modified,
29 corrected, or vacated as provided in G.S. 90-21.67.

30 **"§ 90-21.67. Appeal of arbitrator's decision.**

31 There is no right to a trial de novo on an appeal of the arbitrator's decision under this
32 Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided
33 under G.S. 1-596.23 or G.S. 1-569.24.

34 **"§ 90-21.68. Revised Uniform Arbitration Act not applicable.**

35 The provisions of Article 45 of Chapter 1 of the General Statutes do not apply to
36 arbitrations conducted under this Article except to the extent specifically provided in
37 this Article."

38 **SECTION 2.** G.S. 1-569.3 is amended by adding a new subsection to read:

39 "(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of
40 the General Statutes."

41 **SECTION 3.** This act becomes effective January 1, 2008, and applies to
42 actions filed on or after that date.