

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1671
Committee Substitute Favorable 5/15/07

Short Title: Arbitration/Negligent Health Care Actions.

(Public)

Sponsors:

Referred to:

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. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

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

(a) The parties may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(b) Declaration to Not Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (a) of this section, the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party presented the party with a copy of the provisions of this Article, that the attorneys representing the parties

1 have discussed the provisions of this Article with the parties, and that there is not
2 unanimous agreement to submit the dispute to arbitration under this Article. The
3 declaration is without prejudice to the parties' subsequent agreement to submit the
4 dispute to arbitration.

5 **"§ 90-21.62. Selection of arbitrator.**

6 (a) Selection by Agreement. – An arbitrator shall be selected by agreement of the
7 parties no later than 45 days after the date of the filing of the stipulation where the
8 parties agreed to submit the dispute to arbitration under this Article. The parties may
9 agree to select more than one arbitrator to conduct the arbitration. The parties may agree
10 in writing to the selection of a particular arbitrator or particular arbitrators as a
11 precondition for a stipulation to arbitrate.

12 (b) Selection From Panel. – If the parties are unable to agree to an arbitrator by
13 the time specified in subsection (a) of this section, the arbitrator shall be selected from a
14 panel of special or retired superior court judges who agree to be on a list maintained by
15 the Administrative Office of the Courts. Each party shall alternatively strike one
16 member of the panel, and the last remaining name on the list shall be the arbitrator.

17 **"§ 90-21.63. Witnesses; discovery; depositions; subpoenas.**

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

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

26 (c) Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that
27 exceptional circumstances require additional discovery, each party shall be entitled to
28 all of the following discovery from any other party:

29 (1) Twenty-five interrogatories, including subparts.

30 (2) Ten requests for admission.

31 (3) Whatever is allowed under applicable court rules for:

32 a. Requests for production of documents and things and for entry
33 upon land for inspection and other purposes; and

34 b. Requests for physical and mental examinations of persons.

35 (d) Each party shall be entitled to all of the following depositions:

36 (1) Depositions of any party and any expert that a party expects to call as a
37 witness. – Except by order of the arbitrator for good cause shown, the
38 length of the deposition of a party or an expert witness under this
39 subdivision shall be limited to four hours.

40 (2) Depositions of other witnesses. – Unless the arbitrator determines that
41 exceptional circumstances require additional depositions, the total
42 number of depositions of persons under this subdivision shall be
43 limited to five depositions per side, each of which shall last no longer

1 than two hours and for which each side shall be entitled to examine for
2 one hour.

3 (e) An arbitrator may issue a subpoena for the attendance of a witness and for the
4 production of records and other evidence at any hearing and may administer oaths. A
5 subpoena shall be served in the manner for service of subpoenas in a civil action and,
6 upon the motion to the court by a party to the arbitration proceeding or by the arbitrator,
7 enforced in the manner for enforcement of subpoenas in a civil action.

8 **"§ 90-21.64. Time limitations for arbitration.**

9 (a) The time frames provided in this section shall run from the date of the filing
10 of the stipulation where the parties agreed to submit the dispute to arbitration under the
11 Article. Any arbitration under this Article shall be conducted according to the time
12 frames as follows:

13 (1) Within 45 days, the claimant shall provide a copy to the defendants of
14 all relevant medical records. Alternatively, the claimant may provide
15 to the defendants a release, in compliance with the federal Health
16 Insurance Portability and Accountability Act, for all relevant medical
17 records, along with the names and addresses of all health care
18 providers who may have possession, custody, or control of the relevant
19 medical records. The provisions of this subdivision shall not limit
20 discovery conducted pursuant to G.S. 90-21.63(c).

21 (2) Within 120 days, the claimant shall disclose to each defendant the
22 name and curriculum vitae or other documentation of qualifications of
23 any expert the claimant expects to call as a witness.

24 (3) Within 140 days, each defendant shall disclose to the claimant the
25 name and curriculum vitae or other documentation of qualifications of
26 any expert the defendant expects to call as a witness.

27 (4) Within 160 days, each party shall disclose to each other party the name
28 and curriculum vitae or other documentation of qualifications of any
29 rebuttal expert the party expects to call as a witness.

30 (5) Within 240 days, all discovery shall be completed.

31 (6) Within 270 days, the arbitration hearing shall commence.

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

35 (c) It is the express public policy of the General Assembly that arbitration
36 hearings under this Article be commenced no later than 10 months after the parties file
37 the stipulation where the parties agreed to submit the dispute to arbitration under this
38 Article. The arbitrator may grant a continuance of the commencement of the arbitration
39 hearing only where a party shows that exceptional circumstances create an undue and
40 unavoidable hardship on the party or where all parties consent to the continuance.

41 **"§ 90-21.65. Written decision by arbitration.**

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

1 (b) The arbitrator shall not make an award of damages that exceeds a total of one
2 million dollars (\$1,000,000) for any dispute submitted to arbitration under this Article,
3 regardless of the number of claimants or defendants that are parties to the dispute.

4 (c) If the arbitrator makes an award of damages to the claimant, the arbitrator
5 shall make a finding as to whether the injury or death to the plaintiff was caused by the
6 negligence of the defendant.

7 (d) The fees and expenses of the arbitrator shall be paid by the nonprevailing
8 parties.

9 **"§ 90-21.66. Judgment by court.**

10 After a party to the arbitration proceeding receives notice of a decision, the party
11 may file a motion with the court for a judgment in accordance with the decision at
12 which time the court shall issue such a judgment unless the decision is modified,
13 corrected, or vacated as provided in G.S. 90-21.68.

14 **"§ 90-21.67. Retention of jurisdiction by court.**

15 The court shall retain jurisdiction over the action during the pendency of the
16 arbitration proceeding. The court may, at the request of the arbitrator, enter orders
17 necessary to enforce the provisions of this Article.

18 **"§ 90-21.68. Appeal of arbitrator's decision.**

19 There is no right to a trial de novo on an appeal of the arbitrator's decision under this
20 Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided
21 under G.S. 1-569.23 or G.S. 1-569.24.

22 **"§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

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

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

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

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