

NORTH CAROLINA GENERAL ASSEMBLY  
1973 SESSION

CHAPTER 676  
HOUSE BILL 959

AN ACT TO AMEND CHAPTER 1 OF THE GENERAL STATUTES BY REWRITING THE PROVISIONS RELATING TO ARBITRATION AND AWARD.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 1 of the General Statutes is hereby amended as follows:

- (1) By repealing G.S. 1-544 through G.S. 1-567; and
- (2) By inserting therein a new Article 45A to read as follows:

**"§ 1-567.1. Arbitration agreements made valid, irrevocable and enforceable; scope.** — (a) Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. Such agreement or provision shall be valid, enforceable, and irrevocable except with the consent of all the parties, without regard to the justifiable character of the controversy.

(b) This Article shall not apply to:

- (1) Any agreement or provision to arbitrate in which it is stipulated that this Article shall not apply or to any arbitration or award thereunder;
- (2) Arbitration agreements between employers and employees or between their respective representatives, unless the agreement provides that this Article shall apply.

**"§ 1-567.2. Proceedings to compel or stay arbitration.** — (a) On application of a party showing an agreement described in G.S. 1-567.1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (a) of this section, the application shall be made therein. Otherwise the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused or a stay of arbitration granted on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

"§ 1-567.3. **Appointment of arbitrators by court.** — If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

"§ 1-567.4. **Majority action by arbitrators.** — The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

"§ 1-567.5. **Hearing.** — Unless otherwise provided by the agreement:

- (1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
- (2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
- (3) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.
- (4) Upon the request of any party or any arbitrator, the arbitrators shall cause to be made a record of the testimony and evidence introduced at the hearing.

"§ 1-567.6. **Representation by attorney.** — A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

"§ 1-567.7. **Witnesses, subpoenas, depositions.** — (a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be as provided in G.S. 7A-314.

"§ 1-567.8. **Award.** — (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

"§ 1-567.9. **Change of award by arbitrators.** — On application of a party or, if an application to the court is pending under G.S. 1-567.11, 1-567.12 or 1-567.13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 1-567.13, or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of G.S. 1-567.11, 1-567.12 and 1-567.13.

"§ 1-567.10. **Fees and expenses of arbitration.** — Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

"§ 1-567.11. **Confirmation of an award.** — Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 1-567.12 and 1-567.13.

"§ 1-567.12. **Vacating an award.** — (a) Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of G.S. 1-567.5, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under G.S. 1-567.2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection(a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with G.S. 1-567.3, or, if the award is vacated on grounds set forth in clauses (3) or (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with G.S. 1-567.3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

"§ 1-567.13. **Modification or correction of award** — (a) Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

**"§ 1-567.14. Judgment or decree on award.** — Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be docketed and enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

**"§ 1-567.15. Applications to court.** — Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

**"§ 1-567.16. Court, jurisdiction.** — The term 'court' means any court of competent jurisdiction of this State. The making in this State of an agreement described in G.S. 1-567.11, or any agreement providing for arbitration in this State or under the laws thereof, confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

**"§ 1-567.17. Appeals.**— (a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under G.S. 1-567.2;
- (2) An order granting an application to stay arbitration made under G.S. 1-567.2(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

**"§ 1-567.18. Act not retroactive.** — This act applies only to agreements made on or after August 1, 1973.

**"§ 1-567.19. Uniformity of interpretation.** — This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**"§ 1-567.20. Short title.** — This Article may be cited as the Uniform Arbitration Act."

**Sec. 2.** If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 3.** This act shall become effective August 1, 1973.

In the General Assembly read three times and ratified, this the 22nd day of May, 1973.