

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 597

Short Title: Mediated Settlement Agreements. (Public)

Sponsors: Representatives Bishop, Stam, and Glazier (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

April 9, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT
3 AGREEMENTS TO BE IN WRITING AND SIGNED BY THE PARTIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7A-38.1(l) reads as rewritten:

6 "(l) Inadmissibility of negotiations. – Evidence of statements made and conduct
7 occurring in a mediated settlement conference or other settlement proceeding conducted under
8 this section, whether attributable to a party, the mediator, other neutral, or a neutral observer
9 present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible
10 in any proceeding in the action or other civil actions on the same claim, except:

- 11 (1) In proceedings for sanctions under this section;
12 (2) In proceedings to enforce or rescind a settlement of the action;
13 (3) In disciplinary proceedings before the State Bar or any agency established to
14 enforce standards of conduct for mediators or other neutrals; or
15 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

16 As used in this section, the term "neutral observer" includes persons seeking mediator
17 certification, persons studying dispute resolution processes, and persons acting as interpreters.

18 No settlement agreement to resolve any or all issues reached at the proceeding conducted
19 under this subsection or during its recesses shall be enforceable unless ~~it~~ the settlement
20 agreement or some memorandum or note of the agreement has been reduced to writing and
21 signed by the ~~parties~~ party to be charged. No evidence otherwise discoverable shall be
22 inadmissible merely because it is presented or discussed in a mediated settlement conference or
23 other settlement proceeding.

24 No mediator, other neutral, or neutral observer present at a settlement proceeding shall be
25 compelled to testify or produce evidence concerning statements made and conduct occurring in
26 anticipation of, during, or as a follow-up to a mediated settlement conference or other
27 settlement proceeding pursuant to this section in any civil proceeding for any purpose,
28 including proceedings to enforce or rescind a settlement of the action, except to attest to the
29 signing of any agreements, and except proceedings for sanctions under this section, disciplinary
30 hearings before the State Bar or any agency established to enforce standards of conduct for
31 mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder
32 abuse."

33 **SECTION 2.** G.S. 7A-38.3B(i) reads as rewritten:



1 "(i) Agreements. – In matters before the clerk in which agreements are reached in a
2 mediation conducted pursuant to this section, or during one of its recesses, those agreements
3 shall be treated as follows:

4 (1) Where as a matter of law, a matter may be resolved by agreement of the
5 parties, a settlement is enforceable only if ~~it~~ the settlement agreement or
6 some memorandum or note of the agreement has been reduced to writing
7 and signed by the ~~parties~~ party to be charged.

8 (2) In all other matters before the clerk, including guardianship and estate
9 matters, all agreements shall be delivered to the clerk for consideration in
10 deciding the matter."

11 **SECTION 3.** G.S. 7A-38.3D(l) reads as rewritten:

12 "(l) Written Agreements. – Any agreement reached in mediation or some memorandum
13 or note of that agreement shall be reduced to writing and signed by the ~~parties~~ party to be
14 charged. A non-attorney mediator may assist parties in reducing the agreement to writing."

15 **SECTION 4.** G.S. 7A-38.4A(j) reads as rewritten:

16 "(j) Evidence of statements made and conduct occurring in a mediated settlement
17 conference or other settlement proceeding conducted under this section, whether attributable to
18 a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding,
19 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or
20 other civil actions on the same claim, except:

21 (1) In proceedings for sanctions under this section;

22 (2) In proceedings to enforce or rescind a settlement of the action;

23 (3) In disciplinary proceedings before the State Bar or any agency established to
24 enforce standards of conduct for mediators or other neutrals; or

25 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

26 As used in this subsection, the term "neutral observer" includes persons seeking mediator
27 certification, persons studying dispute resolution processes, and persons acting as interpreters.

28 No settlement agreement to resolve any or all issues reached at the proceeding conducted
29 under this section or during its recesses shall be enforceable unless ~~it~~ the settlement agreement
30 or some memorandum or note of the agreement (i) has been reduced to writing and signed by
31 the ~~parties~~ party to be charged and (ii) in all other respects complies with the requirements of
32 Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible
33 merely because it is presented or discussed in a settlement proceeding.

34 No mediator, other neutral, or neutral observer present at a settlement proceeding under this
35 section, shall be compelled to testify or produce evidence concerning statements made and
36 conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement
37 conference or other settlement proceeding pursuant to this section in any civil proceeding for
38 any purpose, including proceedings to enforce or rescind a settlement of the action, except to
39 attest to the signing of any agreements, and except proceedings for sanctions under this section,
40 disciplinary hearings before the State Bar or any agency established to enforce standards of
41 conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or
42 elder abuse."

43 **SECTION 5.** G.S. 8-110(a) reads as rewritten:

44 "(a) Evidence of statements made and conduct occurring during mediation at a
45 community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and
46 shall be inadmissible in any proceeding in the action or other actions on the same claim, except
47 in proceedings to enforce a settlement of the action. No such settlement shall be binding unless
48 ~~it~~ the settlement agreement or some memorandum or note of the agreement has been reduced to
49 writing and signed by the ~~parties~~ party to be charged. No evidence otherwise discoverable shall
50 be inadmissible merely because it is presented or discussed during mediation."

1 **SECTION 6.** This act becomes effective July 1, 2015, and applies to agreements
2 entered into on or after that date.