

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 772

Short Title: Amend NC Int'l Arbitration/Conciliation Act. (Public)

Sponsors: Representatives Destin Hall, Grange, Rogers, and John (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL
3 ARBITRATION AND CONCILIATION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 45B of Chapter 1 of the General Statutes reads as rewritten:

6 "Article 45B.

7 "International Commercial Arbitration and Conciliation.

8 "Part 1. General Provisions.

9 ...

10 **"§ 1-567.31. Scope of application.**

11 (a) This Article applies to international commercial arbitration and conciliation, subject
12 to any applicable international agreement in force between the United States of America and
13 any other nation or nations, ~~or and any federal statute law.~~

14 (b) The provisions of this Article, except G.S. 1-567.38, 1-567.39, and 1-567.65, apply
15 only if the place of arbitration is in this State.

16 (c) An arbitration or conciliation is international ~~if~~ if any of the following are true:

17 (1) The parties to the arbitration or conciliation agreement have their places of
18 business in different nations when the agreement is ~~concluded; or~~ concluded.

19 (2) One or more of the following places is situated outside the nations in which
20 the parties have their places of business:

21 a. The place of arbitration or conciliation if determined pursuant to the
22 arbitration ~~agreement; or~~ agreement.

23 b. Any place where a substantial part of the obligations of the
24 commercial relationship is to be ~~performed; or~~ performed.

25 c. The place with which the subject matter of the dispute is most closely
26 ~~eonnected; or~~ connected.

27 (3) The parties have expressly agreed in a record that the subject matter of the
28 arbitration or conciliation agreement relates to more than one nation.

29 (d) For the purposes of subsection (c) of this section:

30 (1) If a party has more than one place of business, the place of business is that
31 which has the closest relationship to the arbitration or conciliation
32 ~~agreement; or~~ agreement.

33 (2) If a party does not have a place of business, reference is to be made to the
34 party's domicile.



1 (e) An arbitration or conciliation, respectively, is deemed commercial for the purposes
2 of this Article if it arises out of a relationship of a commercial nature, including, but not limited
3 to any of the following:

- 4 (1) A transaction for the exchange of goods ~~and services~~; or services.
- 5 (2) A distribution ~~agreement~~; agreement.
- 6 (3) A commercial representation or ~~agency~~; agency.
- 7 (4) An exploitation agreement or ~~eonecession~~; concession.
- 8 (5) A joint venture or other related form of industrial or business
9 ~~eoperation~~; cooperation.
- 10 (6) The carriage of goods or passengers by air, sea, water, land, or ~~road~~; road.
- 11 (7) A contract or agreement relating to construction, insurance, licensing,
12 factoring, leasing, consulting, engineering, financing, or ~~banking~~; banking.
- 13 (8) The transfer of data or ~~technology~~; technology.
- 14 (9) The use or transfer of intellectual or industrial property, including trade
15 secrets, trademarks, trade names, patents, copyrights, plant variety
16 protection, and software ~~programs~~; programs.
- 17 (10) A contract for the provision of any type of professional service, whether
18 provided by an employee or an independent contractor.

19 ...
20 (h) This Article does not govern arbitrations under Article 1H of Chapter 90 of the
21 General Statutes.

22 **"§ 1-567.32. Definitions and rules of interpretation.**

23 (a) ~~For the purposes of this Article:~~ The following definitions apply in this Article:

- 24 (1) ~~"Arbitral award" means any Arbitral award. – Any decision of an arbitral~~
25 ~~tribunal on the substance of a dispute submitted to it, and includes an~~
26 ~~interlocutory, interlocutory or partial award;~~ award.
- 27 (2) ~~"Arbitral tribunal" means a Arbitral tribunal. – A sole arbitrator or a panel of~~
28 ~~arbitrators;~~ arbitrators.
- 29 (3) ~~"Arbitration" means any arbitration – Arbitration. – Any arbitration, whether~~
30 ~~or not administered by a permanent arbitral institution;~~ institution.
- 31 (3a) Court. – A court of competent jurisdiction in this State.
- 32 (4) ~~"Party" means a Party. – A party to an arbitration agreement;~~ agreement.
- 33 (5) ~~"Superior court" means the superior court of any county in this State selected~~
34 ~~pursuant to G.S. 1-567.36.~~
- 35 (6) Record. – Information that is inscribed on a tangible medium or that is stored
36 in an electronic or other medium and is retrievable in a perceivable form.

37 ...
38 (d) Where a provision of this Article, other than in G.S. 1-567.55(1) and
39 G.S. 1-567.62(b)(1), refers to a claim, it also applies to a ~~counterclaim,~~ counterclaim or setoff,
40 and where it refers to a defense, it also applies to a defense to ~~such counterclaim,~~ a counterclaim
41 or setoff.

42 **"§ 1-567.33. Receipt of written communications or submissions.**

43 (a) Unless otherwise agreed in a record by the parties, any written communication or
44 submission is deemed to have been received if it is delivered to the addressee personally or if it
45 is delivered at the addressee's place of business, ~~domicile~~ domicile, or mailing ~~address and~~
46 address, and the communication or submission is deemed to have been received on the day it is
47 ~~so delivered. Delivery~~ Unless otherwise agreed in a record by the parties, delivery by facsimile
48 transmission or electronic transmission, if in a record, shall constitute valid receipt if the
49 communication or submission is in fact ~~received,~~ received, and the receipt is in a record.

50 (b) If none of the places referred to in subsection (a) can be found after making
51 reasonable inquiry, a written communication or submission is deemed to have been received if

1 it is sent to the addressee's last known place of business, ~~domicile~~domicile, or mailing address
2 by registered ~~mail~~mail, certified mail, or any other means ~~which~~that provide a record of the
3 attempt to deliver it.

4 (c) The provisions of this Article do not apply to a written communication or
5 submission relating to a court, ~~administrative~~administrative, or special proceeding.

6 ...

7 "Part 2. International Commercial Arbitration.

8 ...

9 **"§ 1-567.36. Venue and jurisdiction of courts.**

10 (a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-567.44(b),
11 1-567.46(c), and 1-567.57 shall be performed by the ~~superior~~court in the following county:

12 (1) The county where the arbitration agreement is to be performed or was
13 ~~made~~made.

14 (2) If the arbitration agreement does not specify a county where the agreement is
15 to be performed and the agreement was not made in any county in the State
16 of North Carolina, the county where any party to the court proceeding
17 resides or has a place of ~~business~~business.

18 (3) In any case not covered by subdivisions (1) or (2) of this subsection, in any
19 county in the State of North Carolina.

20 (b) All other functions assigned by this Article to the ~~superior~~court shall be performed
21 by the ~~superior~~court of the county in which the place of arbitration is located.

22 ...

23 **"§ 1-567.38. Arbitration agreement and substantive claim before court.**

24 (a) When a party to an international commercial arbitration agreement ~~as defined in this~~
25 ~~Article~~ commences judicial proceedings seeking relief with respect to a matter covered by the
26 agreement to arbitrate, any other party to the agreement may apply to the ~~superior~~court for an
27 order to stay the proceedings and compel arbitration.

28 (b) Arbitration proceedings may begin or continue, and an award may be made, while
29 an action described in subsection (a) is pending before the court.

30 **"§ 1-567.39. Interim relief and the enforcement of interim measures.**

31 (a) In the case of an arbitration where the arbitrator or arbitrators have not been
32 appointed, or where the arbitrator or arbitrators are unavailable, a party may seek interim relief
33 directly from the ~~superior~~court as provided in subsection (c). Enforcement shall be granted as
34 provided by the law applicable to the type of interim relief sought.

35 (b) In all other cases, a party shall seek interim ~~measures under G.S. 1-567.47 from the~~
36 ~~arbitral tribunal and shall have no right to seek interim relief from the superior court, except~~
37 ~~that a party to an arbitration governed by this Article may request from the superior court~~
38 ~~enforcement of an order of an arbitral tribunal granting interim measures under~~
39 ~~G.S. 1-567.47.~~relief under G.S. 1-567.47.

40 (c) In connection with an agreement to arbitrate or a pending arbitration, the ~~superior~~
41 ~~court~~ may grant, pursuant to subsection (a) of this ~~section~~section, any of the following:

42 (1) An order of attachment or ~~garnishment~~garnishment.

43 (2) A temporary restraining order or preliminary ~~injunction~~injunction.

44 (3) An order for claim and ~~delivery~~delivery.

45 (4) The appointment of a ~~receiver~~receiver.

46 (5) Delivery of money or other property into ~~court~~court.

47 (6) Any other order that may be necessary to ensure the preservation or
48 availability either of assets or of documents, the destruction or absence of
49 which would be likely to prejudice the conduct or effectiveness of the
50 arbitration.

51 ...

1 (f) The availability of interim relief under this section may be limited by prior written
2 agreement of the ~~parties~~parties in a record.

3 ...
4 **"§ 1-567.41. Appointment of arbitrators.**

5 ...
6 (c) (1) If an agreement is not made under subsection (b) of this section, in an
7 arbitration with three arbitrators, each party shall appoint one arbitrator, and
8 the two arbitrators thus appointed shall appoint the third arbitrator; if a party
9 fails to appoint the arbitrator within 30 days of receipt of a request to do so
10 from the other party, or if the two arbitrators fail to agree on the third
11 arbitrator within 30 days of their appointment, the appointment shall be
12 made, upon request of a party, by the ~~superior~~-court.

13 (2) In an arbitration with a sole arbitrator, if the parties are unable to agree on
14 the arbitrator, a sole arbitrator shall be appointed, upon request of a party, by
15 the ~~superior~~-court.

16 (3) In an arbitration involving more than two parties, if no agreement is reached
17 under subsection (b) of this section, the ~~superior~~-court, on request of a party,
18 shall appoint one or more arbitrators, as provided in G.S. 1-567.40.

19 (d) The ~~superior~~-court, on request of any party, may take the necessary measures, unless
20 the agreement on the appointment procedure provides other means for securing the
21 appointment, if, under an appointment procedure agreed upon by the ~~parties~~parties, any of the
22 following events occur:

23 (1) A party fails to act as required under ~~such procedure~~or the procedure.

24 (2) The parties, or two arbitrators, are unable to reach an agreement expected of
25 them under ~~such procedure~~or the procedure.

26 (3) A third party, including an institution, fails to perform any function entrusted
27 to it under ~~such~~the procedure.

28 (e) A decision of the ~~superior~~-court on a matter entrusted by subsection (c) or (d) of this
29 section shall be final and not subject to appeal.

30 (f) The ~~superior~~-court, in appointing an arbitrator, shall ~~consider~~consider all of the
31 following:

32 (1) Any qualifications required of the arbitrator by the agreement of the
33 ~~parties~~parties.

34 (2) Such other considerations as are likely to secure the appointment of an
35 independent and impartial ~~arbitrator~~arbitrator.

36 (3) In the case of a sole or third arbitrator, the advisability of appointing an
37 arbitrator of a nationality other than those of the parties.

38 (g) The parties may agree to employ an established arbitration institution to conduct the
39 arbitration. If they do not so agree, the ~~superior~~-court may in its discretion designate an
40 established arbitration institution to conduct the arbitration.

41 (h) Unless otherwise agreed, an arbitrator ~~shall be~~is entitled to compensation at an
42 hourly or daily rate ~~which that~~ reflects the size and complexity of the case, and the experience
43 of the arbitrator. If the parties are unable to agree on ~~such~~a rate, the rate shall be determined by
44 the arbitral institution chosen pursuant to subsection (g) of this section or by the arbitral
45 tribunal, in either case subject to the review of the ~~superior~~-court upon the motion of any
46 dissenting party.

47 **"§ 1-567.42. Grounds for challenge.**

48 (a) ~~Except as otherwise provided in this Article, all persons whose names have been~~
49 ~~submitted for consideration for appointment or designation as arbitrators, or who have been~~
50 ~~appointed or designated as such, shall make a disclosure to the parties within 15 days of such~~

1 ~~submission, appointment, or designation of any information which might cause their~~
2 ~~impartiality to be questioned including, but not limited to, any of the following instances:~~

3 (1) ~~The person has a personal bias or prejudice concerning a party, or personal~~
4 ~~knowledge of disputed evidentiary facts concerning the proceeding;~~

5 (2) ~~The person served as a lawyer in the matter in controversy, or the person is~~
6 ~~or has been associated with another who has participated in the matter during~~
7 ~~such association, or has been a material witness concerning it;~~

8 (3) ~~The person served as an arbitrator in another proceeding involving one or~~
9 ~~more of the parties to the proceeding;~~

10 (4) ~~The person, individually or as a fiduciary, or such person's spouse or minor~~
11 ~~child residing in such person's household, has a financial interest in the~~
12 ~~subject matter in controversy or in a party to the proceeding, or any other~~
13 ~~interest that could be substantially affected by the outcome of the~~
14 ~~proceeding;~~

15 (5) ~~The person, his or her spouse, or a person within the third degree of~~
16 ~~relationship to either of them, or the spouse of such a person meets any of~~
17 ~~the following conditions:~~

18 a. ~~The person is or has been a party to the proceeding, or an officer,~~
19 ~~director, or trustee of a party;~~

20 b. ~~The person is acting or has acted as a lawyer in the proceeding;~~

21 c. ~~The person is known to have an interest that could be substantially~~
22 ~~affected by the outcome of the proceeding;~~

23 d. ~~The person is likely to be a material witness in the proceeding;~~

24 (6) ~~The person has a close personal or professional relationship with a person~~
25 ~~who meets any of the following conditions:~~

26 a. ~~The person is or has been a party to the proceeding, or an officer,~~
27 ~~director, or trustee of a party;~~

28 b. ~~The person is acting or has acted as a lawyer or representative in the~~
29 ~~proceeding;~~

30 c. ~~The person is or expects to be nominated as an arbitrator or~~
31 ~~conciliator in the proceeding;~~

32 d. ~~The person is known to have an interest that could be substantially~~
33 ~~affected by the outcome of the proceeding;~~

34 e. ~~The person is likely to be a material witness in the proceeding.~~

35 (b) ~~The obligation to disclose information set forth in subsection (a) of this section is~~
36 ~~mandatory and cannot be waived as to the parties with respect to persons serving either as sole~~
37 ~~arbitrator or as the chief or prevailing arbitrator. The parties may otherwise agree to waive such~~
38 ~~disclosure.~~

39 (c) ~~From the time of appointment and throughout the arbitral proceedings, an arbitrator~~
40 ~~shall disclose to the parties without delay any circumstances referred to in subsection (a) of this~~
41 ~~section which were not previously disclosed.~~

42 (d) ~~Unless otherwise agreed by the parties or the rules governing the arbitration, an~~
43 ~~arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to~~
44 ~~his or her independence or impartiality, or as to his or her possession of the qualifications upon~~
45 ~~which the parties have agreed.~~

46 (e) ~~A party may challenge an arbitrator appointed by it, or in whose appointment it has~~
47 ~~participated only for reasons of which it becomes aware after the appointment has been made.~~

48 **~~§ 1-567.43. Challenge procedure.~~**

49 (a) ~~The parties may agree on a procedure for challenging an arbitrator, subject to the~~
50 ~~provisions of subsection (c) of this section.~~

1 (b) If there is no agreement under subsection (a) of this section, a party challenging an
2 arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal
3 or after becoming aware of any circumstance referred to in G.S. 1-567.42(a), send a written
4 statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged
5 arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal shall decide
6 on the challenge.

7 (c) If a challenge under any procedure agreed upon by the parties or under the
8 procedure of subsection (b) of this section is not successful, the challenging party may, within
9 30 days after having received notice of the decision rejecting the challenge, request the superior
10 court to decide on the challenge, which decision shall be final and subject to no appeal. While
11 such a request is pending, the arbitral tribunal, including the challenged arbitrator, may
12 continue to conduct the arbitral proceedings and make an award.

13 **"§ 1-567.43A. Disclosure by arbitrator.**

14 (a) Before accepting appointment, an individual who is requested to serve as an
15 arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to
16 arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a
17 reasonable person would consider likely to affect the impartiality of the arbitrator in the
18 arbitration proceeding, including the following:

19 (1) A financial or personal interest in the outcome of the arbitration proceeding.

20 (2) An existing or past relationship with any of the parties to the agreement to
21 arbitrate or to the arbitration proceeding, their counsel or representatives, a
22 witness, or other arbitrators.

23 (b) An arbitrator has a continuing obligation to disclose to all parties to the agreement
24 to arbitrate and to the arbitration and to any other arbitrators any facts that the arbitrator learns
25 after accepting appointment that a reasonable person would consider likely to affect the
26 impartiality of the arbitrator.

27 (c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be
28 disclosed, and a party makes a timely objection to the appointment or continued service of the
29 arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-567.64 for
30 vacating an award made by the arbitrator.

31 (d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this
32 section, upon timely objection by a party, the court under G.S. 1-567.64 may vacate an award.

33 (e) An arbitrator appointed as a neutral arbitrator who does not disclose a known,
34 direct, and material interest in the outcome of the arbitration proceeding or a known, existing,
35 and substantial relationship with a party is presumed to act with evident partiality under
36 G.S. 1-567.64.

37 (f) If the parties to an arbitration proceeding agree to the procedures of an institution or
38 any other procedures for challenges to arbitrators before an award is made, substantial
39 compliance with those procedures is a condition precedent to a motion to vacate an award on
40 that ground under G.S. 1-567.64.

41 **"§ 1-567.44. Failure or impossibility to act.**

42 ...
43 (b) If a controversy remains concerning any of the grounds referred to in subsection (a)
44 of this section, a party may request the superior court to decide on the termination of the
45 mandate. The decision of the superior court shall be final and not subject to appeal.

46 (c) If under this section or under G.S. 1-567.43, an arbitrator withdraws or otherwise
47 agrees to the termination of his or her the arbitrator's mandate, no acceptance of the validity of
48 any ground referred to in this section or G.S. 1-567.43(b) shall be implied in consequence of
49 such the action.

50 ...

51 **"§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.**

1 ...

2 (c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this section
3 either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a
4 preliminary question that it has jurisdiction, after having received notice of that ruling, any
5 party may request the ~~superior~~ court to decide the matter. The decision of the ~~superior~~ court
6 shall be final and not subject to appeal. While ~~such a~~ the request is pending, the arbitral tribunal
7 may continue the arbitral proceedings and make an award.

8 **"§ 1-567.47. Power of arbitral tribunal to order interim measures.**

9 (a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a
10 party, order any party to take such interim measure of protection as the arbitral tribunal may
11 consider necessary in respect of the subject matter of the dispute, including an interim measure
12 analogous to any type of interim relief specified in G.S. 1-567.39(c). The arbitral tribunal may
13 require any party to provide appropriate security, including security for costs as provided in
14 G.S. 1-567.61(h)(2), in connection with ~~such~~ the measure.

15 (b) A court has the same power to issue an interim measure in an arbitration
16 proceeding, irrespective of whether the arbitration proceeding is in the territory of this State, as
17 it has in a court proceeding. The court shall exercise this power in accordance with its own
18 procedures in consideration of the specific features of international arbitration.

19 ...

20 **"§ 1-567.49. Determination of rules of procedure.**

21 (a) Subject to the provisions of this Article, the parties may agree on the procedure to
22 be followed by the arbitral tribunal in conducting the proceedings.

23 (b) If there is no agreement under subsection (a) of this section, ~~the arbitral tribunal~~
24 ~~may, subject to the provisions of this Article,~~ subject to the provisions of this Article, the
25 tribunal shall select the rules for conducting the arbitration after hearing all the parties and
26 taking particular reference to model rules developed by arbitration institutions or similar
27 sources. If the tribunal is unable to decide on rules for conducting the arbitration, upon
28 application by a party, the court may order use of rules for conducting the arbitration, taking
29 particular reference to model rules developed by arbitration institutions or similar sources. In
30 other matters not covered by rules, the tribunal shall conduct the arbitration in such manner as
31 it considers appropriate. The power conferred upon the arbitral tribunal includes the power to
32 order such discovery as it deems necessary and to determine the admissibility, relevance,
33 materiality, and weight of any evidence. Evidence need not be limited by the rules of evidence
34 applicable in judicial proceedings, except as to immunities and privilege. Each party shall have
35 the burden of proving the facts relied on to support its claim, counterclaim, setoff, or defense.

36 ...

37 **"§ 1-567.50A. Consolidation.**

38 (a) Except as otherwise provided in subsection (c) of this section, upon motion of a
39 party to an arbitration agreement or to an arbitral proceeding, the court may order consolidation
40 of separate arbitration proceedings as to all or some of the claims if all of the following are
41 true:

- 42 (1) There are separate arbitration agreements or separate arbitral proceedings
43 between the same parties or one of the parties is a party to a separate
44 agreement to arbitrate or a separate arbitration with a third person.
45 (2) The claims subject to the arbitration agreements arise in substantial part
46 from the same transaction or series of related transactions.
47 (3) The existence of a common issue of law or fact creates the possibility of
48 conflicting decisions in the separate arbitral proceedings.
49 (4) Prejudice resulting from a failure to consolidate is not outweighed by the
50 risk of undue delay or prejudice to the rights of or hardship to parties
51 opposing consolidation.

1 (b) The court may order consolidation of separate arbitral proceedings as to some
2 claims and allow other claims to be resolved in separate arbitral proceedings.

3 (c) The court shall not order consolidation of the claims of a party to an arbitration
4 agreement if the agreement prohibits consolidation.

5 **"§ 1-567.51. Commencement of arbitral proceedings.**

6 Unless otherwise agreed by the ~~parties,~~ parties or otherwise provided in the rules and
7 procedures upon which the parties have agreed, the arbitral proceedings in respect of a
8 particular dispute shall commence on the date on which a request for that dispute to be referred
9 to arbitration is received by ~~the respondent,~~ a party as provided in G.S. 1-567.33.

10 ...

11 **"§ 1-567.53. Statements of claim and defense.**

12 (a) Within the period of time agreed by the parties or determined by the arbitral
13 tribunal, the claimant shall state the facts supporting its claim, the points at issue and the relief
14 or remedy sought, and the respondent shall state its ~~defenses and counterclaims~~ defenses,
15 counterclaims, or setoffs in respect of these particulars, unless the parties have otherwise
16 agreed as to the required elements of ~~such these~~ statements. The parties may submit with their
17 statements all documents they consider to be relevant or may add a reference to the documents
18 or other evidence the party will submit.

19 (b) Unless otherwise agreed by the parties, either party may amend or supplement a
20 claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal
21 considers it inappropriate to allow ~~such amendment~~ the amendment, having regard to the delay
22 in making it.

23 (c) If there are more than two parties to the arbitration, each party shall state its claims,
24 defenses, counterclaims, or setoffs, and defenses as provided in subsection (a) of this section.

25 ...

26 **"§ 1-567.57. Court assistance in obtaining discovery and taking evidence.**

27 (a) The arbitral tribunal or a party with the approval of the arbitral tribunal may request
28 from the ~~superior~~ court assistance in obtaining discovery and taking evidence. The court may
29 execute the request within its competence and according to its rules on discovery and taking
30 evidence, and may impose sanctions for failure to comply with its orders. A subpoena may be
31 issued as provided by G.S. 8-59, in which case the witness compensation provisions of
32 G.S. 6-51, 6-53, and 7A-314 shall apply.

33 ~~(b) If the parties to two or more arbitration agreements agree, in their respective~~
34 ~~arbitration agreements or otherwise, to consolidate the arbitrations arising out of those~~
35 ~~agreements, the superior court, upon application by a party, may do any of the following:~~

- 36 (1) ~~Order the arbitrations to be consolidated on terms the court considers just~~
37 ~~and necessary;~~
38 (2) ~~If all the parties cannot agree on an arbitral tribunal for the consolidated~~
39 ~~arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and~~
40 (3) ~~If all the parties cannot agree on any other matter necessary to conduct the~~
41 ~~consolidated arbitration, make any other order it considers necessary.~~

42 ...

43 **"§ 1-567.61. Form and contents of award.**

44 (a) The award shall be made in writing in a record and shall be signed by the arbitrator
45 or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the
46 majority of all members of the arbitral tribunal shall suffice, provided that the reason for any
47 omitted signature is ~~stated~~ stated in the record of the award.

48 (a1) An award shall be made within the time specified by the agreement to arbitrate or
49 the arbitration institution, or, if not so specified, within the time ordered by the court. The court
50 may extend or the parties to the arbitration proceeding may agree in a record to extend the time.

1 A party waives any objection that an award was not timely made unless that party gives notice
 2 of the objection to the arbitral tribunal before receiving notice of the award.

- 3 ...
- 4 (h) (1) Unless otherwise agreed by the parties, the awarding of costs of an
 5 arbitration shall be at the discretion of the arbitral tribunal.
- 6 (2) In making an order for costs, the arbitral tribunal may include any of the
 7 following as costs:
- 8 a. The fees and expenses of the arbitrator or arbitrators, expert
 9 witnesses, and ~~translators;~~translators.
- 10 b. Fees and expenses of counsel and of the institution supervising the
 11 arbitration, if ~~any;~~andany.
- 12 c. Any other expenses incurred in connection with the arbitral
 13 proceedings.
- 14 (3) In making an order for costs, the arbitral tribunal may ~~specify;~~specify any of
 15 the following:
- 16 a. The party entitled to ~~costs;~~costs.
- 17 b. The party who shall pay the ~~costs;~~costs.
- 18 c. The amount of costs or method of determining that ~~amount;~~
 19 ~~and~~amount.
- 20 d. The manner in which the costs shall be paid.

21 (i) The arbitral tribunal may award punitive damages or other exemplary relief if all of
 22 the following are true:

- 23 (1) The arbitration agreement provides for an award of punitive damages or
 24 exemplary relief.
- 25 (2) An award for punitive damages or other exemplary relief is authorized by
 26 law in a civil action involving the same claim.
- 27 (3) The evidence produced at the hearing justifies the award under the legal
 28 standards otherwise applicable to the claim.

29 (j) If the arbitral tribunal awards punitive damages or other exemplary relief under
 30 subsection (i) of this section, the arbitral tribunal shall specify in the award the basis in fact
 31 justifying and the basis in law authorizing the award and shall state separately the amount of
 32 the punitive damages or other exemplary relief.

33 ...

34 **"§ 1-567.64. Modifying or vacating of awards.**

35 Subject to the relevant provisions of federal law ~~or~~and any applicable international
 36 agreement in force between the United States of America and any other nation or nations, an
 37 arbitral award may be vacated by a court only upon a showing that the award is tainted by
 38 illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining
 39 whether an award is ~~so~~-tainted, the ~~superior~~-court shall ~~have regard to~~consider the provisions
 40 of this Article, ~~and of G.S. 1-569.23 and G.S. 1-569.24,~~ but shall not engage in de novo review
 41 of the subject matter of the dispute giving rise to the arbitration proceedings.

42 **"§ 1-567.65. Confirmation and enforcement of awards.**

43 (a) Subject to the relevant provisions of federal law ~~or~~and any applicable international
 44 agreement in force between the United States of America and any other nation or nations, upon
 45 application of a party, the ~~superior~~-court shall confirm an arbitral award, unless it finds grounds
 46 for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed
 47 unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 ~~shall~~
 48 ~~have~~has expired or has been waived by all the parties. Upon the granting of an order
 49 confirming, modifying, or correcting an award, a judgment or decree shall be entered in
 50 conformity therewith and enforced as any other judgment or decree. The ~~superior~~-court may
 51 award costs of the application and of the subsequent proceedings.

1 (b) Notwithstanding G.S. 7A-109, 7A-276.1, 132-1, or any other provision of law, the
2 court may seal or redact, in whole or in part, an order, judgment, or arbitral award issued under
3 this Article. Upon good cause shown, the court may do any of the following:

4 (1) Open a sealed or redacted order, judgment, or arbitral award.

5 (2) Seal or redact an opened order, judgment, or arbitral award.

6 **"§ 1-567.66. Applications to ~~superior~~-court.**

7 Except as otherwise provided, an application to the ~~superior~~-court under this Article shall be
8 by motion and shall be heard in the manner and upon the notice provided by law or rule of
9 court for the making and hearing of motions. Unless the parties have agreed otherwise, notice
10 of an initial application for an order shall be served in the manner provided by law for the
11 service of a summons in ~~an~~-a civil action.

12 ...

13 **"§ 1-567.88. Uniformity of application and construction.**

14 In applying and construing this Article, consideration shall be given to the need to promote
15 uniformity of the law with respect to its subject matter among states of the United States that
16 have enacted the Revised Uniform Arbitration Act, and particular consideration shall be given
17 to the Revised Uniform Arbitration Act as enacted in this State.

18 **"§ 1-567.89. Relationship to federal Electronic Signatures in Global and National**
19 **Commerce Act.**

20 The provisions of this Article governing the legal effect, validity, and enforceability of
21 electronic records or electronic signatures, and of contracts performed with the use of these
22 records or signatures, conform to the requirements of section 102 of the Electronic Signatures
23 in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by
24 federal or State law governing these electronic records or electronic signatures."

25 **SECTION 2.** This act becomes effective October 1, 2017, and applies to
26 agreements entered into, renewed, or modified on or after that date.